***HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

+ APPEAL SUIT No.267 of 1995 and C.R.P.No.998 of 2002

% 20-03-2014

A.S.No.267 of 1995

#Kakarla Rosenna and others ….Appellants

Vs.

$ Thammineni Narasappa and others …. Respondents

C.R.P.No.998 of 2002

#Kakarla Rosenna ….Petitioner

Vs.

$ T.Narasappa and others …. Respondents

!Counsel for the Appellants : Sri V.Ravinder Rao & Sri O.Manoher Reddy

Counsel for the Respondents: Sri R.Subba Rao

<Gist :

>Head Note:

? Cases referred:

1. AIR 2003 SC 1989
2. AIR 1963 SC 1516
3. AIR-2001-SC-965
4. (2003(5)-SCC-89)
5. 1975(1)SCC 212
6. AIR-1976-SC-634
7. AIR-1969-SC-1144
8. 2011(8) SCALE 240
9. AIR 1989 SC 193
10. AIR 1987 SC 1242
11. AIR 1966 SC 735,
12. AIR 1954 SC 458
13. AIR 1953 SC 235
14. AIR 1995 SC 167
15. AIR 1988 SC 719(B)
16. 1991 (3) SCC 331
17. 1998(5)-ALD-349
18. 2003(8)-Supreme Today-194 at 196
19. (2009) 3 SCC 287
20. AIR 1984 SC 664
21. (1994) 5 SCC 167
22. 1911 (35) Bombay-169
23. 1915(39) Bombay 441
24. AIR 1951 PC 7
25. AIR 1963 SC 185 at 193

26. 1870 (7) Bombay HCAC 153
27. 1869 (12) MIA 350
28. 1909 (36) Cal 824
29. AIR 1961 SC 1302
30. 1906 (28) All. 377
31. AIR 1926 PC 1927
32. AIR 1970 SC 1673
33. 1868(4) MHCR 169 Contd…
34. 1881 (6) Cal. 381
35. AIR 1937 Bombay 169
36. AIR 1939 PC 152
37. AIR 1955 MB 129
38. AIR 1954 Raj. 17
39. AIR 1961 SC 1378
40. 2010(3) Scale 569
41. AIR 1956 SC 593,para 23 page 602
42. AIR 1965 SC 241 at para 17&18
43. AIR 1919 PC 162
44. 1971(1) APLJ-338
45. AIR 1959 (A.P) 360
46. ILR 1914 MADRAS 529
47. 1962(2) SCJ 472
48. 2010(3) SCALE 569
49. AIR 1956 SC 593
50. AIR 1965 (SC) 241
51. ILR 1937 Madras 529
52. (1997)2 SCC 630
53. AIR 1983 (SC) 114

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

APPEAL SUIT No. 267 OF 1995 & C.R.P.No.998 of 2002

COMMON JUDGMENT:

A.S.No.267 of 1995

1) The 1st defendant-Kakarla Rosenna among 3 plaintiffs including Narayanamma and Ch.Narayana filed this appeal against the four plaintiffs T.Narasappa, Ch.Narayana Swamy, Ch.Narasimhulu and Ch.Rajendra, aggrieved by the Judgment and decree dated 23.01.1995 in O.S. No.102 of 1985 on the file of Principal Subordinate Judge, Anantapur.

C.R.P.No.998 of 2002

1(a) Said 1st defendant in O.S.No.102 of 1985 (being the appellant in A.S. No.267 of 1995) filed this revision aggrieved by the order in final decree petition against him in I.A. No.467 of 1998 in O.S.

No.102 of 1985 on the file of Principal Senior Civil Judge, Anantapur.

2) Pending appeal the appellant-1st defendant of the suit Rosanna died and his L.Rs brought on record as appellants 2 to 4 by name Rangayya, Ananda Kumar and Vijaya Lakshmi as per orders in A.S.M.P. No.153, dated 18.06.2012 and the plaintiff T.Narsappa who was 1st respondent to the appeal also died and his L.Rs brought on record as respondents 7 to 11 by name Narsappa, Ranganna, Jayanarasimhulu @ Jayanna, Pullamma and Narayanamma as per orders in C.M.P.No.22508 of 1998 dated 18.08.1999. Said persons also brought on record during pendency of the final decree petition in I.A. No.467 of 1998 (impugned in the revision) i.e., the 1st plaintiff T.Narsappa's L.Rs as petitioners 5 to 7 viz., Narayana, Rangappa and Jayanarasimhulu vide orders in I.A. No.273 of 2000 dated 28.08.2000 and also C.Narasimhulu and Pullamma as respondents 4 and 5 vide orders in I.A. No.72 of 1999 dated 08.03.1999.

3) Since both the matters are interrelated and come out of one and the same dispute between the parties, both matters are clubbed together and the parties are being referred to as were arrayed before the trial Court in the original suit for the sake of convenience.

4) The suit was filed by plaintiffs 1 to 4 seeking partition and separate possession of the plaintiffs' 5/8th share in the plaint schedule properties by metes and bounds and for mesne profits for three years prior to suit and thereafter till the date of possession of their share against the 1st defendant.

The brief averments in the plaintiffs' case are as follows:

4(a) The schedule mentioned property originally belongs to Balappa, who got married Mangamma, had one son (Chandrappa) and two daughters (Pullamma and Narayanamma). Balappa died in or around 1920 and after 8 years his son Chandrappa died unmarried

and the schedule mentioned properties devolved on widow Mangamma, who also died subsequently. Consequent upon the death of Mangamma, her daughter, sole heir, Narayanamma was the absolute owner of the property as the other daughter Pullamma also died during the life time of Mangamma.

(b) Narayanamma, sole heir of Balappa, entered into possession of the properties. On 15.06.1959 said Narayanamma executed a gift (Ex.A-7) of half share in favour of Aswarthappa (father of plaintiffs 2 to 4 & 2nd defendant) and defendants 1 & 3 jointly to be enjoyed by the three branches. The other half share in the schedule mentioned property, Narayanamma, gifted in favour of the 1st plaintiff reserving her right to enjoy the same during her life time with limited interest under the gift deed dated 13.04.1973(Ex.A-1). Narayanamma also executed a lease deed in favour of the 1st plaintiff permitting him to cultivate the lands. Subsequently Narayanamma also died. Consequent to the death of Narayanamma, 1st plaintiff became entitled to half share, plaintiffs 2 to 4 and 2nd defendant together are entitled 1/6th share and defendants 1 and 3 each became entitled to 1/6th share in the schedule properties.

(c) When disputes arose between the parties, during the life time of Narayanamma, the 1st plaintiff and Narayanamma, filed a suit in O.S. No.274 of 1973 (Ex.B-15-plaint) on the file of District Munsif, Gooty for permanent injunction against 1st defendant and others from interfering with their possession and enjoyment and the same was dismissed, vide its Judgment dated 23.04.1979 (Ex.B-17), on the ground that the 1st plaintiff had not made out that he was in possession and enjoyment of the suit properties. Aggrieved by the same, the 1st plaintiff filed an appeal in A.S. No.119 of 1979 on the file of District Judge, Anantapur and the same was also dismissed vide its judgment

dated 24.08.1981 holding that the adoption of the 1st defendant by Narayanamma and illatom affiliation of Rangappa are not true and the plaintiffs had 1/6th share in the suit properties and the defendants 1 and 3 are entitled to 1/6th share in the property.

(d) The 1st defendant also filed O.P. No.218 of 1974 which was later numbered as a suit in O.S. No.80 of 1977 (Ex.A-3 Plaint) on the file of Subordinate Judge, Anantapur for declaration of his title to the plaint schedule properties and also for possession of the properties through Court and for mesne profits and the same was dismissed for non-prosecution by the plaintiff therein (1st defendant herein). The 1st defendant is entitled to only 1/6th share in the suit properties and he is not entitled to any of the properties, however, on the ground that he had been dispossessed by virtue of an order of injunction in O.S. No.274 of 1973, he later filed I.A. No.52 of 1979 (Ex.B-19 petition) and took possession of the same by order dated 05.05.1979 and delivery was recorded on 09.05.1979. Though the 1st plaintiff filed a petition for restitution of possession, he was not successful on that count.

5. The 1st defendant filed his written statement and the brief averments are as follows:

5(a) After the death of Balappa, Mangamma took Rangappa as her illatom son-in-law, by giving him in marriage with Narayanamma, agreeing to give him half a share in the properties as per custom and usage prevailing in their community and Rangappa had been living with his wife in his father-in-law's house at Chayapuram and became the joint owner of the properties along with his wife Narayanamma. After the death of Mangamma, Narayanamma and Rangappa entered into the properties as joint owners and adopted the 1st defendant on 13.11.1942 (Ex.B-1) under a registered deed. Since the date of adoption, the 1st defendant also became a joint owner of the properties

along with his parents. Therefore, after the adoption Narayanamma was not the sole and absolute owner of the properties and hence she has no right to execute any gift deed and the said gift deed as stated by the plaintiffs will not confer any rights to the donees and the gift is valid only to the extent of Narayanamma's share, and even on the date of the alleged gift deed, said Narayanamma is mentally weak for more than 75 years old and not capable of taking care of herself, that taking advantage of the same, 1st plaintiff seems to have played fraud on her and might have obtained the alleged gift deed, which is not valid and enforceable in law.

(b) The suit lands were never in possession and enjoyment of the plaintiffs 2 to 4 or defendants 2 and 3. After the death of Narayanamma, the 1st defendant was in joint possession and enjoyment of suit properties, became the sole and absolute owner of the same. The plaintiffs with an intention to grab the properties, started some disputes by filing a suit in O.S. No.274 of 1973 and upon the dismissal, filed an appeal in A.S. No.119 of 1977, which was also dismissed. After filing the suit in O.S. No.274 of 1973, they have obtained an interim injunction order with which they tried to interfere with the rightful possession and enjoyment of the 1st defendant. Under those circumstances, the 1st defendant filed O.S.No.80 of 1977 on the file of Sub-Court, Anantapur and as the injunction was vacated in the previous suit O.S. No.274 of 1973 as it was dismissed, the 1st defendant did not prosecute the same.

(c) After the death of Narayanamma and Rangappa being the adopted son and sole and absolute owner of the suit properties, the 1st defendant having possession and enjoyment of the same, paying land revenue also and no one else paying the same and hence, neither the plaintiffs nor the other defendants have any right, title or interest in the suit properties. He got a half share being an adopted son and on the

other half, he got it by inheritance on the death of Rangappa and Narayanamma.

(d) Since the plaintiffs themselves admitted regarding the prior suit, under which it has been held that the 1st defendant is in physical possession of the suit properties in his own right and that the plaintiffs are not in possession of the same, they cannot be deemed to be in joint possession of the suit properties and since they did not file said suit for possession or for partition, but for injunction, this suit is barred under Order II Rule 2 C.P.C.

(d) As far as the mesne profits are concerned, when the 1st defendant was never in wrongful possession of the suit properties and when the 1st defendant is enjoying as a rightful owner, that question does not arise. The defendants 2 and 3 are colluding with the plaintiffs and the suit is liable to be dismissed.

6. Basing on the pleadings of both the parties, the trial Court framed the following issues:-

i. Whether the plaintiffs are entitled for partition and separate possession of their due share as claimed?

Additional issues:

ii. Whether the gift deed dated 13.04.1973 executed by Narayanamma in favour of the 1st plaintiff is true?

iii. Whether the gift deed dated 15.06.1959 executed by Narayanamma in favour of Aswarthappa, the 1st defendant and 3rd defendant is true?

iv. Whether said gift deeds are vitiated by fraud as mentioned by 1st defendant in para-4 of the written statement?

v. Whether Rangappa was the illatom son-in-law of Mangamma as contended by the 1st defendant?

vi. Whether the adoption set up by the 1st defendant to Rangappa and Narayanamma is true, valid and binding on the plaintiffs?

vii. Whether Narayanamma was not entitled to all the

properties but was entitled to only a share as contended by the 1st defendant in para 3 of the written statement?

viii. Whether the plaintiffs are entitled to mesne profits?

ix. To what relief?

7. During the course of trial, the plaintiff as P.Ws-1 and another witness as P.W-2 were examined on behalf of the plaintiff and marked Exs.A-1 to A-14. Ex.A-1 is the registration extract of gift deed dated 13.04.1973 executed by Narayanamma in favour of the 1st plaintiff, Ex.A-2 is the copy of Judgment in A.S. No.119 of 1979 which was dismissed, Ex.A-3 to A-6 are the copies of plaint, written statement, judgment and decree respectively in O.S. No.80 of 1977, Ex.A-7 is the registration extract of gift deed dated 15.06.1959 executed by Narayanamma in favour of Aswarthappa and others, Exs.A-8 to A-14 are the relevant portions in the evidence of various witnesses including the 1st defendant during the course of trial in O.S. No.274 of 1973. On behalf of defendants the 1st defendant as D.W-1 and another witness as D.W-2 were examined and marked Exs.B-1 to B-22. Ex.B-1 is registered document dated 13.11.1942 executed by Narayanamma in favour of the 1st defendant, Ex.B-2 is Lagnapatrika of the 1st defendant, Exs.B-3 to B-10 are the tax receipts, Ex.B-11 is the transfer of patta, Exs.B-12 to B-14 are the verification report given by the verification officer of land ceiling tribunal, Anantapur; order passed by L.R.Tribunal and notice of the L.R.Tribunal respectively. Exs.B-15 to B-19 are copies of plaint, written statement, judgment and decree respectively in O.S. No.274 of 1973, Ex.B-20 is the publication in Andhra Prabha dated 05.06.1973, Ex.B-21 is copy of Judgment of High Court of A.P and Ex.B-22 is the relevant portion marked in Ex.B-16.

8. After considering the entire evidence of witnesses, documents exhibited by both parties and after hearing both sides,

learned Principal Subordinate Judge, Anantapur passed preliminary decree on 23.01.1994 holding that the 1st plaintiff is entitled for 1/24th share, plaintiffs 2 to 4 are entitled for 1/24th each, 1st defendant and 3rd defendant are each entitled for 4/24th share and 2nd defendant is entitled for 1/24th share in the plaint schedule properties and also held that the plaintiffs are entitled for mesne profits in respect of their share in the plaint schedule properties.

9. Aggrieved by the same, the 1st defendant, filed the present appeal contending that the decree of partition in favour of the plaintiffs' is contrary to law, weight of evidence and the trial Court having held the appellant has been validly adopted by Narayanamma by establishing the same vide Ex.B-1 registered deed, which was also attested by Rangappa, ought to have dismissed the suit as the 1st defendant is entitled to all the properties as the absolute owner and the 1st defendant is in continuous possession and enjoyment of all the suit properties since 13.11.1942 for which mutation in the revenue records has also been done in his favour. The 1st defendant further contends that the trial Court ought to have held that Exs.A-1 and A-7 should be invalid as Narayanamma herself given up her rights in all the suit properties under Ex.B-1 and no records establishes possession of Narayanamma at any point of time. The 1st defendant further impugning that merely because no direct evidence after the lapse of over 75 years could be produced, it does not mean that the plea of 1st defendant as regards the illatom of Rangappa and Mangamma cannot be believed and prayed to allow the appeal by setting aside the decree and Judgment dated 23.01.1994 passed in O.S. No.102 of 1985 on the file of Principal Subordinate Judge, Anantapur.

10. After passing of the decree, pending the appeal, the plaintiffs filed I.A. No.467 of 1998 in O.S. No.102 of 1985 under Order XX Rule 18 C.P.C seeking a final decree by appointing a

commissioner for demarcation of the schedule properties in terms of the preliminary decree and for assessment of the mesne profits of the schedule properties and when the respondents reported no counter, the learned Principal Senior Civil Judge appointed an Advocate-Commissioner for demarcation in terms of the preliminary decree for assessment of the mesne profits and learned Advocate-Commissioner filed his report. Basing on the report and after considering the entire material on record, the learned Principal Senior Civil Judge allowed the petition on 13.04.2001 in I.A.No.467 of 1998 in O.S. No.102 of 1985 holding that the legal representatives of the 1st petitioner are entitled for mesne profits of Rs.3,60,660/- towards their 12/24th share, petitioners 2 to 4 are entitled to Rs.30,055/- each for their 1/24th share and the 3rd respondent is entitled to Rs.1,20,220/- towards his 4/24th share i.e., 1/6th share. The learned Judge further held that the petitioners are also entitled to 6% interest from the date of the order till the date of realization over the respective amounts to which they are entitled.

11) Aggrieved by the same, the petitioner-1st defendant, filed C.R.P.No. 998 of 2002 impugning the ascertaining of mesne profits as illegal, improper and unjust by exceeding jurisdiction, that even the learned Advocate Commissioner had made a personal inspection and had arrived at Rs.1,64,000/- and odd towards mesne profits and the learned Judge has absolutely no basis to arrive at the figure of Rs.7,21,000/- and odd; that the learned Judge ought to have observed that the entire Anantapur District has been drought hit since over a decade and there has been absolutely no crop on many lands in the district and the Learned Judge ought to have seen and follow the report of the Commissioner regarding the wasteful plants filled upon many lands and prayed to allow the revision by setting aside the decree and order dated 13.04.2001 passed in I.A. No.467 of 1998 in O.S. No.102 of 1985 on the file of Principal Senior Civil Judge,

Anantapur.

12. During the course of this appeal the sole appellant died and legal representatives of the appellant-1st defendant were brought on record as appellants 2 to 4 as per order dated 20.06.2013 in A.S.M.P.No.153 of 2013. The 1st respondent-1st plaintiff also died and legal representatives of the 1st respondent also brought on record as respondents 7 to 11 vide orders dated 18.08.1999 in C.M.P.No.22508 of 1998.

13. Heard both sides and perused the material on record. In the course of hearing the appeal, the learned counsel for the appellants reiterated above contentions in seeking to set aside the trial Court's decree and judgment by dismissal of the suit claim. Whereas it is the contention of the counsel representing the respondents that the appeal claim is speculative and baseless in order to trouble them further, that the trial Court after discussion of the entire evidence on record by proper appreciation of fact and law came to the right and reasoned conclusion but for finding on alleged adoption which they can assail and but for that, for this Court while sitting in appeal, there is nothing more to interfere, hence, to dismiss the appeal.

14. Now the points that arise for consideration in the appeal are:

1. *Whether the 1st plaintiff for half share and the remaining plaintiffs 2 to 4 along with 2nd defendant for 1/6th respectively to the claim of 5/8th share for remaining said to be entitled by defendants 1 and 3 each 1/6th out of plaint schedule, entitled to partition with separate possession based on Ex.A-1 to A-7 settlement deeds respectively executed by Narayanamma for the plaint schedule properties respectively as its owner with possession and enjoyment by creating right and reserving life interest possession and enjoyment?*

2. *Whether plaintiffs are not entitled to partition and possession of any extent over the plaint schedule properties from the claim by 1st defendant as adopted son of Narayanamma*

and her husband Rangappa (so called illatum son-in-law of Mangamma widow of Balappa under caste custom in vogue) under Ex.B-1 adoption deed and with claim Narayanamma also divested her right over the plaint schedule properties thereunder and otherwise also from the claim of the 1st defendant perfected title by adverse possession?

3. *Whether the trial Court's decree and judgment granting relief of partition with separate possession and profits is unsustainable and requires interference by this Court while sitting in appeal and if so to what extent including on the quantum of profits arrived by the trial Court in the final decree proceedings impugned in the C.R.P. No.998 of 2002?*

4. *To what result?*

15. As the points 1 to 3 are interrelated, to avoid repetition of evidence point wise and for sake of convenience all the points are taken up together to decide commonly.

16. Before coming to decide the above points 1 to 3 for consideration, it is apt to state the settled position of law in dealing with appreciation of the evidence by the appellate Courts and powers of the appellate Court that:

16(a) As per **Banarsi Vs.Ramphal**[1] and **Pannalal V. State of Bombay**[2] (5 judges bench), the 1st appellate Court must re-appreciate (appreciate afresh) the entire evidence in giving its findings supported by reasons as to decide the lis and therefrom to find how far the decision of the trial court on any of its findings and conclusions are correct or incorrect, including for confirmation or reversal of said findings of the trial Court and the appellate Court for that is conferred with powers of width amplitude under Order XLI Rule 22,24 and 33 so as to do complete justice between the parties and such power is unfettered to make whatever order it thinks fit, even between co-respondents, for ordinarily cross-objections between co-respondents they do not prefer. It is also as per **Santosh Hazari V. Purushottam Tiwari**[3] and **Madan Lal V. Yoga Bai**[4], and **Harihar Prasad Singh**

V. Balmiki Prasad Singh[5], that in Civil appeals, particularly in first appeal, the appreciation of evidence is at large like appreciation of evidence in a suit, more particularly from Order XLI, Rule 33 and 24 C.P.C. No doubt, the burden of showing that the judgment or even a finding therein under a challenge in appeal is wrong or incorrect either wholly or in part lies on the appellant and same is also the proposition in the course of the cross-objections as the cross-objectors are at par with appellants so far as their contentions in the cross-objections concerned, in the course of the cross-objections in shifting the burden on them, from hearing the main appeal. Coming to the powers of the 1st appellate Court in this regard concerned, more particularly from Order XLI, Rule 33 and 24 C.P.C. and from several expressions of the Apex Court including **Koksingh V. Deokabai**[6]**; Gaisi Ram V. Ramji Lal**[7] and **Madan Lal** (supra), that the 1st appellate court is competent to grant relief if finds appropriate on any facts though that was not granted by the trial Court in rendering complete justice and prevent to the extent possible scope for further litigation and to give finality to the *lis*. It is in spite of non-filing of appeal or cross-objections with any specific plea, for granting such relief it is within the power of the appellate Court, subject to the rider that it cannot grant more relief than what was granted by the trial Court for want of cross-objections **Ranjan Prakash V. Divisional Manager**[8] and **Banarsi** (supra)**.** It is needless to say the 1st appellate Court desires to reverse the judgment and decree of lower Court, it should discuss the findings and set aside those which are unsustainable either on fact or on law.

16(b) It is also the well-settled proposition of law from **S.B. Noronal V. Prem Kundi**[9] that, pleadings are not statutes and legalism is not verbatim. Common sense should not be kept in cold storage, when pleadings are construed. In **Ram Sarup Gupta Vs. Bishur Narain Inter College**[10] referring to the constitution Bench

expression in **Bhagwati Prasad V.Chandramaul**[11] **and Sheodhari Rai V. Suraj Prasad Singh**[12] **Trojan and Company V. R M N N Nagappa Chettiar**[13] that the pleadings should receive a liberal and not pedantic approach as meant to ascertain the substance and not form, it only requires the opposite party to know. Though generally no plea, no evidence can be looked into and for no issue, no finding can be given; it is not always the static principle from the fact that even a plea not made specifically from deficiency in pleadings, but if covered by implication and evidence let in and parties know the case, it can be looked into and even to give finding no issue framed is of no bar to formulate a point and decide. Burden of proof in such matters, pales significance as what is necessary is party shall aware of the plea and let in evidence for the Court to give finding from the hearing covering the lis but not outside the scope. It was also held therein that even alternative remedy not pleaded if entitled, Court can grant it where it is appropriate to do so. I n **Balasankar Vs. Charity Commissioner, Gujarat**[14] at para-19-it was held that, burden of proof pales significance when both parties adduced evidence and it is the duty of the court to appreciate the entire evidence adduced by both sides in deciding the lis; also on the aspect as to party proved in possession of best evidence is bound to produce the same to throw light on the lis and to unfold any truth and thereby cannot take shelter on the abstract doctrine of burden of proof saying burden not on him to prove by filing the same, as laid down in **NIC vs. Jugal Kishore**[15], and in **Lakhan Sao Vs. Dharam Chowdhary**[16].

16(c) It was also laid down in this regard that, the appreciation of evidence is no doubt from experience and knowledge of human affairs depending upon facts and circumstances of each case and regard had to the credibility of the witness, probative value of the documents, lapse of time if any in proof of the events and occurrence for drawing inferences, from consistency to the material on record to

draw wherever required the necessary inferences and conclusions from the broad probabilities preponderance from the over all view of entire case to judge as to any fact is proved or not proved or disproved. Coming to the proof of facts out of the facts in issue to the extent of relevant facts concerned, the above expression discussed what is meant by proved, not proved or disproved with reference to Section 3 of the Evidence Act. In **N.K.Somani Vs., Punam Somani**[17], also the scope as to what is the difference between proved, not proved and disproved was discussed.

16(d) **In RVEE Gounder Vs., RVS Temple**[18] case at paras 25 & 26, the Apex Court discussed that, in civil cases the proof is by preponderance of probabilities for including in suits relating to ejectment or declaration of title or for possession; and the onus shifts from initial burden on the plaintiffs if able to establish from preponderance of probabilities for entitlement, on the defendant to rebut the same including with specific claim on their part if any. It is in explaining the earlier propositions of law that, in a suit for ejectment, plaintiff shall win or lose his case only on his own strength principle, since it does not mean the onus of proof is static and always on the plaintiff or it shall never shifts on the defendant even if the plaintiff is able to establish his case from preponderance of the probability as to what is meant by proved, not proved or disproved required for the above expressions with reference to Section 3 of Evidence Act without going into the other components of “may presume, shall presume and conclusive proof”, from the very definition, proved and disproved to say not proved is when it is neither proved nor disproved. It requires considering the matters before the Court on any fact for either believes it to exist or does not exist (which is by direct evidence), or considers its existence so probable that a prudent man ought, under the circumstance of a particular case to act upon supposition that it exists or it does not exist(which is by circumstantial evidence). At para-25 of

the judgment, the Apex Court clearly held that in a suit for ejectment once plaintiff has been able to create a high degree of probability so as to shift the onus on the defendant, it is for the defendant to discharge his onus and in the absence there of, the burden of proof lies on the plaintiff shall be held to have been discharged so as to prove the plaintiff's title.

16(e) Coming to the law on interpretation of deeds and documents in i). **Narendra Gopal Vs. Rajat Vidhyardhi**[19] para-32 (cl.3) it was held that, in appreciating the documents of unilateral dispositions and testamentary dispositions(wills), the true intention of the testator (executant) has to be gathered, not by attaching importance to isolated expressions but by reading the document as a whole. The intention of the testator must be ascertained not only from the words used but also from surrounding circumstances. The court will put itself in the armchair of the executant/testator. (ii). **In V.S.Talwar Vs. Premchandra**[20] at para-7 it was held that in construing instruments court must have regard not only to the presumed intention of the parties but also to the meaning of the words which they have used. (iii). **In Hind Plastics Vs. Collector of Customs**[21] at para-17 it was held that, every instrument has to be so interpreted as to accord with the intention of its maker having regard to the language used. Though one cannot ignore actual words used and go after the supposed intention of maker, since that would amount to entering the arena of speculation, but all the same said principle is unexceptionable.

16(f) It is also just to have a glimpse on the Hindu Un-codified Law relating to adoption as on the date of adoption, which was prior to Hindu Adoption Maintenance Act, 1956 came into force.

As per Mulla on Principles of Hindu Law, 20th Edition (Lexis Nexis Butterworth Wadhwa, Nagapur revised by S.A.Desai, Volume-I

(2006-2007) chapter 23 from pages 771 to 848 at page 772 para 444, the objects of adoption are stated of two fold:- Firstly of religious, to secure spiritual benefit to the adopter and to his ancestors by having a a son for the purpose of offering funereal cakes and libations of waters to the soul of adopter and his ancestors. The second is secular, to secure an heir and perpetuate the adopter's name.

By referring to **Sitaram V. Harihar**[22], **Balagangadhar Tilak V. Srinivas**[23] and subsequent expression of the privy council[24] the Supreme Court in **Chandra Sekhar V. Kulandaivelu**[25] observed that the validity of the adoption is to be determined by spiritually rather than temporal considerations and that devolution of property is only of secondary importance. In Sitaram (supra), it was observed that when a Hindu gives a boy in adoption, his act be according to the Hindu Sastras, in the nature of sacred gift voluntarily made and as per *Manu* that to be confirmed by pouring water and it is at par with performing a daughter's marriage by *Kanyadan* as both are gifts for religious and secular purposes. In para 445 of **Mulla** supra, page 773 the requirements of valid adoption stated that no adoption is valid unless the person adopted is capable for taking in adoption and the person giving in adoption is capable in giving adoption and the person adopts is capable to taken in adoption and the adoption is to be completed by actually giving and taking irrespective of the ceremony called *Datta Homam* performance is essential for validity of adoption or not. In para 446 of *Mulla* supra, pages 773 and 774 it was observed that, every male may adopt if he is competent and a wife also can adopt to her husband. However, a wife cannot adopt a male without having an express consent from her husband it was by referring to expression in **Narayan V. Nana**[26] saying it is only after death of the husband the wife may adopt in certain parts of India, only if he has expressly authorized her to adopt and in other parts even without such authority. However, in no case can a wife or a widow adopt a son to herself, the

adoption must be made to her husband otherwise invalid and it confers no legal rights upon person adopted vide decision **Chowdary Pudan Singh V. Koer Oodey Singh**[27] and **Narendra V. Dina Nath**[28]. The Supreme Court by referring to the same in **Kasturi V. Ponnammal**[29] held that if the adoption made by husband in his life time, his wife would join him and being known as adopted mother. However, by that it is not an adoption by the wife to herself but the adoption is to the husband. Therefrom a Hindu may adopt or deligate a power to adopt to his wife in writing in his life time for her to adopt after him.

17. From the above principles of law laid down in the expressions, coming to the decision on the facts in dispute covered by the points 1 to 3 for consideration,

17(a) The so called adoption dated 13.11.1942 covered by Ex.B-1 document is in dispute. The recital speaks that the person to be adopted by name Rosanna was the natural son of one Kakarla Pullanna @ Pullayya of the village Chayapuram and the person that was taken in adoption by referring as Dattutalli since minor represented by her as Kakarla Narayanamma, W/o.Rangappa of the same village and the document referred as adoption deed speaks that it is she Kakarla Narayanamma, W/o.Rangappa executed the document as adoption deed only in her favour. It is not even a document executed by natural parents to the adopted parents or even otherwise by referring therein any giving and taking of the boy in proof of the factum of adoption. It is practically a unilateral document which is not contemplated for an adoption deed. Apart from it, the contents speak that she was by then aged only 45 years and there is nothing to say her husband was by then no more or she was a widow by then and if so she was authorized by her husband in his life time to enable her to adopt by anything in writing. She speaks her husband was by then even alive there and for they have no issues she has choosen to

adopt. In fact Ex.A-1 gift deed dated 13.04.1973 executed by her speaks that husband of Narayanamma only died in the year 1972. Ex.B-1 document further speaks the natural father of the minor boy Rosanna, by name Pullayya was no other than brother of her husband Rangappa and it further speaks out of two sons of said Pullayya, this minor boy Rosanna was the eldest. Leave apart, whether eldest son was to be given in adoption or not, she refers in the document executed in her favour by styling as an adoption as in future for the obsequies to her and to her husband a male child is required to adopt thereby with the consent of their husband as per Hindu Law she adopted the boy as her adopted son. Thereby from then this minor boy Rosanna as if her naturally born son, (naa owrasa putruni vale) her entire property to mean what the property succeeded from her parents (movable and immovable) this minor boy Rosanna will enjoy with absolute rights and perform to her and to her husband the obsequies in future. Hence, this deed of adoption (Dattu Sweekaara Dastaveju). In fact her property which she succeeded from her parents shall not form part of coparcenary property of her husband and the adopted son, even the adoption is valid, unless she conveys by transfer of her title by proper document over the property to the so called adopted son, by simply any reference therein. If at all there is any expression of intention it was not a transfer of any right in presendi, for not even a gift or settlement nor it conveys any meaning to say an ante adoption agreement. It speaks the intention to take the property and perform to her and her husband the obsequies in future. If that is the case, it is virtually a bequeath to take effect after her life time for the future enjoyment and the future performance of the obligations of obsequies etc. It is nowhere speaks to whom she executed the document even, but for by referring to herself in the initial lines while commencing writing of the document by referring as adopted mother. It is not even the fact if at all that he was already taken in adoption muchless by her husband but for by referring this is the document for adoption. There is

totally nothing about her husband was taking the child in adoption. There is nothing to say, when her husband was alive, under what right she was taken the child in adoption. There is nothing even to say the adopted parents of the boy given the child in adoption. It is not out of context to mention from the material placed on record that said Narayanamma who executed the document Ex.B-1 in her favour being wife of Rangappa stated got the properties from her parents and it is not even for her husband's properties to succeed or to have any right by birth. Her husband was not even one of the attestors to the document so called adoption document. It is thus invalid which creates no right to claim as adopted son and even no transfer of rights over her property or putting in possession thereunder the minor boy i.e., the 1st defendant appellant herein.

17(b) Narayanamma being the owner of the properties and there is nothing even to say her husband was taken as illatum son-in-law, muchless as per any custom to so say prevailing, muchless he was given any right in the property or as joint owner thereunder with others or thereby the so called son to be adopted will get any right thereunder muchless by birth by treating as coparcenary property, even to give any credence to the contention of the 1st defendant. Narayanamma while so enjoying as absolute owner she gifted the properties. A perusal of Ex.A-1 registered gift deed executed by said Narayanamma in favour of the 1st plaintiff referring that her husband died intestate left behind her 7 months before execution of Ex.A-1 deed dated 13.04.1973 (to say the husband of Narayanamma only died in the year 1972) and was alive by the time of so called so called Ex.B-1 adoption deed dated 13.11.1942. Once again it is to say there from that it is an invalid document as when her husband was alive by the time of so called Ex.B-1 adoption deed dated 13.11.1942 and as such she was not having any right in her husband's life time to adopt, muchless even by referring with his consent. The adoption by written

consent of the husband is conferred to the widow and not in the lifetime of the husband. When it is not even a document executed by the natural parents of the minor boy in proof of adoption acknowledging their giving and her taking. Without giving which is a pre-requisite for taking, the question of taking when does not arise, can the recital in the document gives life to the adoption muchless to say there is giving for said recital of taking that too when it is not an acknowledgement of a past transaction of earlier oral adoption but for from recital speaks as if it is the deed of adoption a contemporaneous document to the alleged adoption. The recitals in the document are also silent as to what were the ceremonies observed for the adoption to say there was adoption. Without which, a mere recital no way gives life muchless sanctity to say adoption. From this factual background to the claim of adoption allegedly dated 13.11.1942 executed on the stamps purchased in her name on that day and registered on that day. Even to say out of the four attestors of the document, one Kakarla Ranganna, S/o.Subbanna and the 4th one Kakarla Pullayya was the husband of Narayanamma and his brother-cum-natural father of Rosanna was not even correlating for father's name of Pullayya not even mentioned either at the attestor's column like for Ranganna or in the recitals. In this regard, as per Para 448, page 776 of *Mulla* supra, it is categorically stated referring to the expression in **Narayana** (supra) that a wife cannot adopt a son to her husband during her husband's lifetime except with his express consent. Here as can be seen from Ex.B-1 document there is no express consent to said Narayanamma by her husband Rangappa to adopt said Rosanna, the Pullayya's son. It was regarding the written authority referred supra it was observed in para 453 of *Mulla* of page 780 that the authority must be in writing and registered unless it is given under a will vide decision **Mottasiddilal V. Kundanlal**[30] and **Ravath V. Beni Bahadur**[31] and if the authority is given under a will, it must be executed in accordance with the formalities required by Section 63 of the Indian

Succession Act. As per para 456 of *Mulla* supra pages 782 and 783 it was observed that even the husband authorized the wife in his life time to adopt in writing, the widow who is so authorized by her husband may or may not adopt. It is her discretion for no legal obligation thereby to adopt or not vide decision **Chandra Sekhar** (supra) even she had been expressly directed to do so by her husband in life time. Her rights to her husband's estate not in any way affect by her omission or refusal to adopt. As per paras 458 and 459 of *Mulla* supra, pages 784 to 789 of the parts of Madras State (Presidency) in particular concerned to the place of Anantapur by then was under erstwhile Madras composite state, a widow cannot alone adopt without authority from her husband unless there is express permission in the life time of her husband to adopt by her or he was separated from her before his death, subject to the consent of the immediate Sapindas of her husband in the absence of authorization by her husband to adopt. The decision of the Apex Court in ***Tahsil Naidu V. Kulla Naidu***[32] by referring **Chandra Sekhar** (supra) speaks that the assent of *Sapindas* because of supposed incapacity of a widow for independent action and not by reason of the affect of adoption of the proprietory rights of the co-parceners or reversionaries as property considerations are no more paramount in the case of a undivided family than in the case of divided family. Thus, from the above even during the life time of the husband the question of her adopting does not arise to give any validity to the adoption even taken for arguments' sake there was giving and taking as it is the husband alone that has to adopt at best by joining the wife with him to adopt and not by wife by saying with any consent of husband when he is alive. Coming to the competency of persons to give in adoption concerned as per para 471 of *Mulla* page 808 the person who can lawfully given a boy in adoption are his father and mother. Even in the Ex.B-1 deed apart from Narayanamma's husband Rangappa alive and she has no right to adopt, the so called minor boy Rosanna allegedly adopted concerned,

the mother's name of minor boy not even referred but only his father's name as natural son of Pullayya @ Pullanna and there is nothing even to say, parents given the boy in adoption and therefrom the adoption was accepted by taken the boy. Therefrom it is to say the so called adoption under Ex.B-1 is invalid under law so far as giving and taking of the said minor boy Rosanna concerned. Under Para 447 of *Mulla* supra from pages 810 to 814 regarding the person to be adopted it speaks the person to be adopted is a male unless there is custom to adopt female and must belong to same caste of adopting father and must not be within the prohibited degrees of relationship in the absence of any special custom so to establish and giving to the ceremonies of adoption as per paras 485 to 489 of *Mulla* supra of pages 817 to 821, there must be a physical act of giving and receiving with an intent to transfer the boy from one family to other family, *Datta Homam* and any other minor ceremonies and of which the physical act of giving and receiving of essentialities though not *Datta Homam* particularly of the Madras area vide decision **Singamma**[33] and other minor ceremonies and the physical act of giving and receiving absolutely necessary to the validity of adoption is not only of in all casts of Hindus including Sudras and the law does not accept any substitute for the ceremony and in the absence of the ceremony mere expression of consent or the execution of a day of adoption and it is registered, but not accompanied by actual delivery of the boy does not operate as valid adoption – vide decision **Shoshinath V. Krishna Sundari**[34] valid in several other expressions including **Neeleva V. Gurshiddappa**[35], **Biradhmal V. Prabhavathi**[36], **Permanand V. Laxminarain**[37], **and Bujandas V. Nanurain**[38]. It was observed further that two concepts of giving and taking in adoption there should be some overt act necessary to signify the delivery of the boy from one family to the other though no particular form is prescribed for the ceremony when the law requires the natural father should give the

adoptive boy and adoptive parent should receive him. The said ceremony of giving and taking irrespective of the nature of the ceremony in proof of it, should be necessarily there vide decision **Laxman Singh V. Rupkanwar**[39]**.** It is therefrom the result of adoption (subject to proof of the essential ceremony of giving and taking by any specified overt act necessary) the adoption has the affect of transferring the adopted from his natural family into the adoptive family to confer on the adoptee same rights and privileges of the family of the adopter as legitimate son but for restriction of marriage within the prohibited degrees of relationship. From very recitals of Ex.B-1 placed reliance on by the 1st defendant to the suit in claiming adoption the so called adopted mother Narayanamma when her husband Rangappa was alive has no right to adopt and there is nothing to say the so called adopted by Rosanna's parents given the boy in adoption and the same was accepted by Rangappa and Narayanamma as adoptive parents to validate. Thus, Ex.B-1 does not give any right to the claim of the alleged adoption is validly made thereunder. Coming to the other recital in the document that thereby in future to perform the obsequies to her and to her husband as natural son and to enjoy the property of her which is succeeded by her parents with absolute rights concerned it is not a persona designata confirmation of right but by referring to the right to the adopted son and very adoption since invalid no rights accrue thereunder apart from nothing to say any gift of the property or of title from the said stray sentence muchless to consider as will to give any life to the recital to the document to the title thereunder. From this background the other important document to be appreciated is Ex.A-7 gift/settlement deed executed by Narayanamma dated 15.06.1959 registered document No.745/59. The recitals speaking that it was executed jointly in favour of (1) Aswarthappa (father of the plaintiffs 2 to 4 & D-2), (2) Narayana @ Narayanappa (3rd defendant) (3) Kakarla Rangappa's son,

(adopted Rosanna) i.e., the 1st defendant by referring her as Kakarla Narayanamma W/o.Rangappa and daughter of Balappa and the recitals speak that said Aswarthappa and Narayana are her sister Pullamma's daughter's sons and thereby also grand sons to her by that relation and the other person Rosanna is her adopted son. Here also she referred as (Naa Dattu Kumarudu) and not adopted son of her husband and of that all the three persons she performed marriages and attending their welfare and thereby out of love and affection towards they all out of the property described in the schedule belongs to her she has given to the three persons equally out of half of her interest by settlement, so that all the three have to take possession of after the life time of her husband and herself and to enjoy with rights. It is to say right is conferred and possession is postponed by reserving life interest and possession in the life time of her husband and herself and she described without the properties succeeded from her husband Balappa in saying properties of her and those are in possession and enjoyment with absolute rights. The document no doubt further speaks that on 13.11.1942 (under Ex.B-1) she and her husband taken said Rosanna has brought adopted son and with his consent also thereby out of her properties in the undivided half share she also jointly execute the document in favour of the three. It is important to note that from saying she or her husband or by both taken said Rosanna in adoption on 13.11.1942, it does not give life to the adoption when there is no valid adoption by giving by the natural parents of the boy and taking by her husband to adopt as discussed supra from Ex.B-1 and the Ex.B-1 recitals of her giving any properties to her son after life time of her husband also no way have any sanctity to create any right thereunder Ex.B-1 as discussed supra and as such even from this reference no rights created over the properties of her by the executant of Ex.A-7 settlement deed dated 15.06.1959 by name Narayanamma, W/o.Rangappa who has also alive by then and it is in fact referring his consent also for the settlement of her undivided half of

the property jointly in favour of the three persons which include himself. Here there is a doctrine of election if at all he also to make any claim under so called adoption but of conferring of any right over the property of her not to rely on Ex.A-7 rather to approbate and reprobate. Coming to said doctrine of election, it is well laid down in **Karuna Kapali Vs.M/s Lalchand PC Trust**[40] that he who accepts a benefit under a deed or will or other instrument, must adopt the whole contents of the instrument, must confirm to all its provisions and renounce all rights that are inconsistent with it. Election is obligation imposed upon a party by Courts of equity to choose between two inconsistent or alternate rights or claims in cases where there is a clear intention of the person from whom he derives the one, that he should not enjoy both. Every case of election therefore, presupposes plurality of rights, with an intention of the party who has a right to control one or both, that one is substitute for others. The party who is to take has a choice, but he cannot enjoy the benefit of both as laid down in **Streatfield Vs.Streat field** and explained by the three judge Bench in **Nagubai Ammal Vs.B.shyam Rao**[41] that the doctrine of election is not however confined to instruments. A person cannot say at a time that a transaction is valid and thereby obtained some advantage, to which he could only be entitled on the footing that it is valid and then turned round and say it is void for the purpose of securing some other advantage, to approbate and reprobate the transaction. In Halsbury's laws of England Vol.13, page: 454 para 572, the principle has been described as species of estoppels. The said principle is also been accepted in **C.Bwepathuma Vs.Velasine S.Kadamboli phaya**[42]**.**

17(c) Even coming to Ex.B-2 *Lagna Patrika* of the marriage of the 1st defendant referred in his evidence as D.W-1 in chief, it no way improves muchless deviate to the said confusion as Ex.A-7 settlement deed dated 15.06.1959 itself speaks Narayanamma and her husband Rangappa performed the marriages of Aswarthappa, Narayana (father

of plaintiffs 2 to 4 and D-3) but also of the 1st defendant Rosanna by styling as adopted son. Even Ex.A-7 described as discussed above referring him as adopted son so also Ex.B-1 but as discussed supra, there is no valid adoption by giving and taking and there is no valid adoption by incompetency of Narayanamma during life time of her husband to take adoption and even Rosanna was the eldest son though not only son by then to his parents. Once there is no valid adoption and Ex.B-1 does not give any right to claim as adopted son muchless to claim any property thereunder Narayanamma as discussed supra and subsequently Narayanamma while considering the properties in her own executed Ex.A-7 settlement deed dated 15.06.1959 discussed supra giving it the properties of her half share undividedly to Aswarthappa, Narayana and Rosanna (D.W-1 1st defendant) and he was not even minor by then is not in dispute, he did not chose to issue any notice questioning the said document muchless filed any suit immediately after Ex.A-7 dated 15.06.1959 if at all aggrieved by the dispossessions made by Narayanamma therein, he cannot say that he was adopted by Rangappa and Narayanamma or he was given in adoption by his parents to Rangappa and Narayanamma or he got any rights or the same is acknowledged in Ex.B-1 to substantiate by Ex.B-1 or he was given any rights over entire properties under Ex.B-1. The fact that 1st defendant as D.W-1 claimed his age at the time of giving his evidence in 1993 of 58 years show that he was born in or around 1935 to say Ex.B-1 deed of 13.11.1942 was after completing his 6 years of age while running 7th year and it is also his evidence in chief as D.W-1 that he was about 6 years old by the time of Ex.B-1. It is to say and born in 1935 or so he was by the date of Ex.A-7 dated 15.06.1959 was about 34 years and Ex.A-7 also referring his consent for the settlement. When he wants to rely Ex.A-7 to take advantage of referring therein as adopted son even, he cannot ignore the other part of the document referring he consented for giving the property to the three persons thereunder to say he elected for the same

and waived his right to dispute the same, if not estopped by his conduct for so disputing. From this background coming to the other document Ex.A-1 settlement deed dated 13.04.1973 executed by Narayanamma in favour of the 1st plaintiff in the suit, the remaining undivided half of the property save the other half Ex.A-7 settlement deed dated 15.06.1959. The recitals of Ex.A-7 speak that it was executed in favour of T.Narsappa, S/o.Peda Rangappa i.e., Narayanamma's sister Pullamma's son Narsappa first plaintiff in the suit. It also refers said relationship and thereby being sister's son is like her son and that they have no issues, that the settlee was also assisting her and her husband in the cultivation of properties that her husband Rangappa breathed the last about 7 months prior to that and even thereafter as usual he is assisting her in attending her works. That out of love and affection towards him he want to settle some properties to him and thereby settled the property with absolute rights by postponing possession during her life time by retaining with her to enjoy without right of alienation. It is about 5 years thereafter on 09.05.1970 admittedly Narayanappa, W/o.Rangappa breathed the last it thereby establishes that Rangappa died in 1972 and Narayanamma died in May 1979.

17(d) Said Narayanamma and Pullamma are the daughters of one Balappa and Mangamma of Chayapuram not in dispute and also of the fact that besides Narayanamma and Pullamma the two daughters, their parents Balappa and Mangamma were having a son Chandrappa who died unmarried pre-deceased his mother Mangamma, in 1928-29 i.e., about 8 or 9 years after death of Balappa original owner in 1920. It is practically to say among the properties of Balappa and Mangamma whatever Narayanamma got is thereby the maternal side properties and not the properties of Narayanamma's husband (Rangappa) so far as the suit properties are concerned. It is further to say whatever Narayanamma settled in favour of his late

Sister Pullamma's son under Ex.A-1 gift deed of 1973 and daughter's two sons each 1/3rd out of the remaining half and to the 1st defendant but so called adopted son of Narayanamma another 1/3rd out of half i.e., 1/6th besides the 1/3rd out of remaining half to Rosanna so called adopted son of Narayanamma i.e., 1st defendant herein. It is thereafter the litigation was first started was first covered by O.S. No.274 of 1973 between Rosanna, the 1st defendant, in the suit said adopted son of Narayanamma on one hand and Narayanamma along with her sister's son and sisters as plaintiffs therein on the other hand.

17(e) The plaint in O.S. No.274 of 1973 marked as Ex.B-15 reads that the defendant Kakarla Rosanna was referred as alleged adopted son of Kakarla Rangappa (husband of Narayanamma) do also refers from para-3 of the plaint Ex.B-15 that properties belonged to Prathipati Balappa i.e., Narayanamma's father and also family genealogy Balappa's wife Mangamma was having a son by name Chandrappa besides Pullamma and said Narayanamma and Balappa died leaving his three children and after Balappa's property devolved upon Chandrappa who died unmarried about 8 years after death of Balappa and thereby schedule properties devolved upon Balappa's wife Mangamma i.e., mother of Pullamma and Narayanamma and later Pullamma died and Mangamma also died and thereby claimed Narayanamma became absolute owner of entire property after death of her mother Mangamma and Narayanamma was cultivating the property with possession and enjoyment. Later she executed gift-cum-settlement deed dated 15.06.1959 Ex.A-7 by settling undivided half share of schedule properties in favour of Rosanna the 1st defendant and two others Aswarthappa and Narayana (Narayanappa) jointly by retaining possession with her while conveying title to take possession after her life time. It is further averred from para-5 that the defendant Rosanna alleging as adopted son of her by placing reliance upon adoption deed dated 13.11.1942 (Ex.B-1) and the so called adoption

itself is invalid and unenforceable and alleged adoption no way bind the properties of her (Narayanamma) but for said Rosanna has got only and the only undivided joint right along with Aswarthappa and Narayanamma in the property settled by her (settlement deed dated 15.06.1959 as regards other joint half the 1st plaintiff (Narayanamma) gifted in favour of the 2nd plaintiff Narsappa by retaining possession with her with life interest enjoyment about three months prior to the filing of this suit under Ex.A-1 dated 13.04.1973. It is further averred from para-6 that the 1st plaintiff (Narayanamma) have been enjoying the schedule mentioned properties and by residing in one of the items therein and her husband also died 9 months prior to the filing of the suit (1972) as discussed supra and thereafter she has leased out the schedule mentioned landed properties to the second plaintiff i.e., Narsappa on Koru basis. It is further averred from para-7 of the plaint that the defendant Rosanna without having any manner of title or possession over the schedule properties during the life time of 1st plaintiff, taking advantage of the death of her husband Rangappa and her helplessness being widow, started threatening to enter into the schedule properties by use of force and so proclaiming to cause obstruction to the enjoyment of her properties with support of rowdy elements which made the plaintiffs (Narayanamma and Narsappa) to file the suit for injunction restraining the defendant (Rosanna). The cause of action averred was from the date of death of her husband and from three days prior to the filing of the suit, when from the defendant started threatening to enter possession by dispossessing her and prayer in the plaint as per para 10 is to pass a decree in favour of the plaintiffs and against the defendant granting permanent prohibitory injunction restraining him and his men from interfering with peaceful possession and enjoyment of the properties and for costs. The plaint filed was in July, 1973. The schedule properties described therein were in 9 items of landed property in survey numbers 921/B (10-50

cents) 923/A (3-24 cents), 925/C (11-06 cents), 931/B (Ac.1-15 cents), 931/D (Ac.1-91 cents) 933/D (Ac.7-03 cents), 1029/D (Ac.3-40 cents), 1038/D (Ac.1-54 cents) and 1041/B (Ac.2-20 cents), total Ac.34-58 cents besides the house property of Chayapuram, H/o.Konakandla village. The written statement filed by defendant Rosanna (marked as Ex.B-16) reads that after death of Chandrappa (Narayanappa's brother on 28.02.1974) his mother Mangamma (Balappa husband of Mangamma predeceased his son Chandrappa) took her son-in-law Rangappa (husband fo Narayanamma 1st plaintiff in the suit) as her illatom son-in-law having affiliated by illatum adoption by giving half share in the property as per custom and usage prevalent in their area and other half should go to her daughter Narayanamma (1st plaintiff) and since then Rangappa and his wife Narayanamma were living in the house of Mangamma and thus it is not 1st plaintiff Narayanamma alone that became absolute owner after death of Mangamma, but for to say Narayanamma and her husband were having undivided half each as joint owners in possession with right and enjoyment. It is further averred in para-5 of the written statement that was marked as Ex.B-22 that late Rangappa and 1st plaintiff (Narayanamma) have adopted Rosanna as their adopted son on 13.11.1942 under registered deed executed by the 1st defendant and attested by late Rangappa. This portion reads that the adoption was under the document and not any oral adoption followed by any ceremony and subsequently acknowledged by the document Ex.B-1 as discussed supra have been from said recitals therein and from said recitals the said contention of Rangappa and Narayanamma both adopted him is proved false as it was the deed executed by Narayanamma for herself as executant and in the name of her as minor Rosanna's guardian-cum-adopted mother. It is already discussed on said adoption by Narayanamma during life time of her husband Rangapa is invalid. Mere attestation by Rangappa of the document no way confers any right muchless to say

or describe Rangappa as co-executant and he got knowledge, even attributing knowledge of the contents of the document not possible without cogent evidence, he has taken as with knowledge and when it is not as per law and hit by law and there is no proof of giving of adoption by the natural parents of Rosanna and there is no proof of taking of adoption by the person competent i.e., Rangappa, the execution of the deed by Narayanamma as if she adopted with alleged consent of her husband no way sanctifies. The other contention in the written statement Ex.B-16, para-5 is that as per premise of the adoption deed (Ex.B1) is not only adopted son of Narayanamma but also created immediate rights of him in respect of her share of properties devolved upon, from her parents and delivered possession thereafter. As discussed already, from reading of Ex.B-1 and Ex.A-7 she referred all her absolute properties and did not refer has got only share in the properties muchless saying her husband was illatum son-in-law and given half share in the properties after death of her mother. Ex.B-1 even describes her properties which she get from her father Balappa. There is nothing to speak any delivery of properties to Rosanna by her; for giving any credence to said contention in the written statement para-5, page-2 of she delivered possession to him of any properties muchless he was in possession and enjoyment in his own right. In fact as described above he was admittedly aged 7 years and he deposed as D.W-1 by then aged 6 years. Once he was minor admittedly 7 years by alleged adoption deed dated 13.11.1942, the question of settling any properties to him as adopted son under the document or his possession and enjoyment thereunder does not arise. What all described is being adopted son he has to enjoy after life time of her husband and herself by performing their obsequies and no interest presandi thereunder created and even taken as created is subject to the adoption as adopted son and that was invalid no right to possession thereunder to confer as discussed supra. Coming to his Ex.B-16 written statement in para-5 further avers at page 2 he alleges

after Rangappa's death, the other half in the properties as his adopted son devolved on him or he in his own right and enjoyment in possession of the plaint schedule properties, same are not tenable muchless to dispute possession of Narayana over the properties. Ex.B-16 written statement further averments are that the 1st plaintiff (Narayanamma) executed gift deed on 13.06.1969, (in fact it is Ex.A-7 dated 15.06.1959) alleging that she has not the sole owner to execute the gift deed for having a share in the plaint schedule properties only to validate the gift only in her share. It is important to note he did not dispute the said gift deed he did not deny the said gift deed and its execution, but for if at all to say supra, for which as answered already it requires no repetition of he was conferred with no right in any extent of property of her. Coming to written statement para-7 averments on the date of adoption deed dated 13.11.1942 the 1st plaintiff Narayanamma created rights in favour of Rosanna in all her properties which she inherited to her and delivered possession and thereby he is joint owner of plaint schedule properties as adopted son and after death of her adopted father Rangappa got right and thereby the suit for injunction is not maintainable, it is as answered supra no way requires repetition for no right given no possession delivered and no right he got for such contention. Having accepted Ex.A-7 gift deed by specifically not denied and of it is acted upon having not disputed. In the absence of proof of validity of the adoption muchless he was adopted by Rangappa (Husband of Narayanamma) muchless Rangappa was given half of the properties by mother-in-law of Rangappa named Mangamma as illatum son-in-law, his right to claim any entitlement over any of the properties muchless with possession does not arise apart from no right conferred even under so called adoption deed Ex.B-1 dated 13.11.1942 and for no such whisper even in Ex.B-1 or Ex.A-7 to let in any oral evidence contrary to said documentary evidence as discussed supra. Further once he accepted and not disputed Ex.A-7 gift deed dated 15.06.1959 the possession is

retained with Narayanamma for the property by conferring right in favour of three persons along with the 1st defendant to have undivided 1/3rd out of the said settlement deed which is only half share by retaining other half with her not to say only undivided right after her life time for 1/6th out of properties. He cannot thereby claim any right of possession even taken for arguments he was allowed to continue in management of any properties of Narayanamma in her life time as alleged adopted son. Coming to the Ex.B-16 further averments from para-8 that he was in possession and enjoyment along with Narayanamma as joint owner concerned, as discussed supra the adoption deed is invalid and without authority and there was no giving and taking and there was no right created in any properties pursuant to it, thus question of claiming joint rights or joint possession does not arise. Ex.B-16 written statement para-9 averments, are nothing but repetition of what is discussed supra. His further averments from para-11 of the Ex.B-16 written statements regarding his payment of taxes no way creates rights but for from settled law of any payment is on behalf of the owner entitled to possession and not even to claim any adverse possession muchless right of possession.

17(f) Even coming to with the evidence of 2nd plaintiff Narsappa as P.W-2 one T.Pullayya 1st plaintiff and one T.Laxmayya and with reference to documents Exs.A-1 to A-10 i.e., gift deed, No.3 accounts, cist receipts relating to the suit properties and the voters list from 1959 to 1971 and from the evidence of Ch.Venkatappa, T.Peda Venkata Rao, K.Srinivasa Rao, Veerababu, D.Ws 1 to 5 with reference to Exs.B-1 to B-15 statement before police in criminal case of T.Narsappa and affidavit of T.Laxmappa and adoption deed of 1942 and cist receipts, cist payment book, Lagna Patrika (wedding card of Rosanna) No.10(1) adangal, police complaint, L.C.C. notice and order and notice to surrender, placed by the parties the suit in O.S. No.274 of 1973 by judgment dated 23.04.1979 ended in dismissal. The

judgment speaks that, defendant's evidence in the suit shows Rangappa was taken as illatum son-in-law by Mangamma as per custom and he was managing the properties. *Mulla* Hindu law under note 515 under the head *Illatum* son-in-law by custom of affiliating the son-in-law and giving him a share as per Old Madras Presidency to which the State of A.P. is part and the custom was given a social recognition by referring to a judgment of **Kirstnamma V. Venkatasubbayya**[43] regarding the said custom not old; that D.W-2 deposed in this regard to believe the contention of the defendant and though under *Mulla* under head 515(a) it speaks a specific agreement is the basis of this affiliation, difficult to secure such evidence to prove for same taken place long ago and when plaintiffs not adduced any evidence rebutting said evidence of D.Ws by denying illatum adoption, despite D.Ws 1 and 2 speak that in Kamma community there is such custom, it is difficult to prove by securing documents of the 60 years old transaction taken place if at all prior to 1936 and thereby held that Mangamma had adopted Rangappa, the husband of Narayanamma, as illatum son-in-law; once that is the case, 1st plaintiff Narayanamma even got in remaining half, for which the gift deed Ex.A-7 dated 15.06.1959 said to have been executed; the defendant Rosanna when contends that he was taken in adoption by Narayanamma and Rangappa in 1942 under the document filed, who is no other than Rangappa's brother's son, D.W-1, one of the attestor-P.C.Venkatappa to the adoption deed that Rosanna was taken in adoption and at that time Rangappa the husband of Narayanamma was also present along with Narayanamma, executed the document and they adopted with consent of parents of Rosanna and there from all went to Guntakal to get the adoption deed executed and registered and since then Rosanna was cultivating all the properties to say from 1942.

18) In fact said conclusion of the trial Court is also no basis as discussed supra of Rosanna by then admittedly 6 or 7 years a minor

and the question of his inducting to possession as adopted son of any properties for his personal cultivation and management does not arise from his age of 6 years and that itself belies above evidence and as discussed supra the adoption deed of the year 1942 Ex.B-1 herein nowhere speaks the parents of Rosanna present and given the child in adoption muchless stood as attestors and there is no recital of giving and taking muchless or Rangappa husband of Narayanamma and it is not the adoption between Rangappa and Rosanna's father Pullayya @ Pullanna and no oral evidence can be substituted contrary to the documentary evidence even under Section 91 and 92 of the Evidence Act but for to explain anything from the contents and the said contrary evidence no way surviving to prevail over the documentary evidence. Thus, above findings no way improves the *l i s* in favour of the appellant-1st defendant. Said decree and judgment in O.S. No.274 of 1973 which are marked as Ex.B-18 and B-17 respectively was subject matter of appeal in A.S. No.119 of 1979 which is marked as Ex.A-2. The appeal judgment of the District Court in A.S. No.119 of 1979 i.e., the appeal filed by 2nd plaintiff of O.S. No.274 of 1973 T.Narsappa as Narayanamma the 1st plaintiff in the suit by then breathed the last on 09.05.1979 and the appeal filed against all the 6 defendants of the suit and the Ex.A-2 appeal judgment of the District Court speaks from para-6 that point arises for consideration in the appeal was whether the appellant in possession of the plaint schedule properties to the exclusion of respondents for entitlement of injunction prayed for. From para-7 onwards of the appeal judgment it was observed that, when admittedly the plaint schedule properties originally belonged to Prathipati Balappa and Balappa had three children, Chandrappa, Pullamma and Narayanamma and Narayanamma was married to Rangappa and Rangappa brother's son is the said Rosanna 1st defendant and Aswarthappa and Narayanappa the other donees along with Rosanna (of the gift deed dated 15.06.1959) of the daughter's son

of Pullamma (sister of Narayanamma), the respondents 2 to 5 are the children of Aswarthappa and 6th respondent is brother of Aswarthappa, for Aswarthappa no more, when Balappa died 50 years ago to the plaint i.e., prior to 1923 and on his death of his properties were devolved on his son Chandrappa who died 8 years later (prior to 1930-31) and after his death the properties devolved on Mangamma (Chandrappa's mother and Balappa's wife) and out of the two daughters of Mangamma, Pullamma pre-deceased Mangamma, on the death of Mangamma about 18 years before filing of the suit in 1973 (in fact Mangamma died in 1942 or so) as she was not alive even by the date of the so called adoption deed dated 13.11.1942 from its recitals and there from the properties devolved upon Narayanamma only surviving daughter of Mangamma i.e., the 1st defendant therein and since then she was in possession and enjoyment and leased out the properties to the 2nd plaintiff particularly after the death of her husband Rangappa (about few months before filing of suit in 1973) and in the plaint averred that Rosanna was interfered with possession by threatening her and the 1st defendant Rosanna came with contention in the written statement for no written statement filed by defendants 2 to 5 sons of Aswarthappa or defendant No.6 Narsappa alleging Mangamma took Rangappa as illatum son-in-law after death of Chandrappa to give half share in the properties and Rangappa and Narayanamma adopted 1st defendant in 1942 and 1st plaintiff gave her half share to 1st defendant, the 1st defendant having not denied specifically plaint allegations of death of Balappa and Chandrappa and Pullamma of respective dates. The 1st defendant for setting up his case of alleged adoption in 1942 has no knowledge to speak the alleged illatum adoption of Rangappa by Mangamma, so to plead in the written statement muchless the illatum adoption of Rangappa by Mangamma or so to plead in the written statement muchless the illatum adoption with agreement to give any half share, when he does

not know anything as to when exactly illatum adoption takes place and when he admitted in cross-examination as D.W-1 the lands in dispute were the lands of Narayanamma which she got from her mother Mangamma and D.W-2 also witness to speak illatum adoption of Rangappa, admitted he has no personally aware of said illatum adoption as he was a young boy, the evidence on record nowhere show Rangappa was taken as illatum son-in-law by Balappa muchless with any agreement to give half share in the property and thereby lower Court went wrong so to conclude of alleged illatum adoption of Rangappa by Balappa and Mangamma is proved and to that conclusion the appellate Court referred a judgment in **Pedda Changamma V. Chinna Chengamma**[44] that for illatum adoption it is essential pre-requisite of adoptive must marry the daughter of the adopter and that there must be an agreement to give a share and mere living in the house of father-in-law would not make him in illatum son-in-law. In the absence of establishment of both the ingredients in need to confer the status and the same principle is reiterated **Venkayya V. Satyanarayana**[45]**.** The 1st defendant also admitted that he subsequently filed O.S. No.80 of 1977 on the file of Sub-Court, Anantapur for possession of plaint schedule properties against Narsappa (2nd plaintiff in O.S. No.274 of 1973). Said Narsappa filed I.A. No.231 of 1981 seeking permission to adduce evidence by filing certified copy of plaint in O.S. No.80 of 1977 as additional evidence which petition was opposed even that suit was filed subsequent to the giving of evidence in the suit and thereby he could not adduce evidence in the trial Court in seeking to adduce as additional evidence thereby received the same and marked as Ex.A-11, plaint copy, wherein as plaintiff the 1st defendant to the suit O.S. No.274 of 1973 by name Rosanna alleged that those were the absolute properties of Narayanamma. It belies his contention of Rangappa illatum son-in-law muchless under any custom of Kamma community and Rosanna

as D.W-1 in the suit O.S. No.274 of 1973 deposed of alleged adoption by Rangappa and Narayanamma in their house in 1942 and his natural parents and adopted parents present and natural parents agreed to give him in adoption and on the following day the adoption was recorded by the execution of deed (registered adoption deed dated 13.11.1942) and adoptive father Rangappa attested the deed and therefrom he was living in the house of adoptive parents and his marriage was performed by preparing Lagna Patrika describing as adopted son and he deposed as D.W-5 that he was minor hardly 10 years by then and D.W-1 deposed of no special rituals performed for alleged adoption and the evidence is not even consistent with D.Ws 2 to 5 with reference to so called adoption deed marked as Ex.B-3 as contended.

19) When the recitals speak Narayanamma adopted with consent of husband, even that itself is suffice to say the adoption is invalid for there is nothing even established of natural parents delivered the child to Rangappa and his wife Narayanamma to take by them in adoption as a pre-requisite even no rituals required to the same in particular form, further in the absence of evidence of giving and acceptance, no presumption can be drawn as held in **Vaithalingam V. Natesa**[46] and there can be no valid adoption unless adoptive boy is transferred from one family to another family by ceremony of giving and taking required to be true as also held in **Lakshman Singh V. Rup.Kanwar**[47]**.** The evidence of D.Ws 1 and 2 nowhere shown the natural parents agreed to give the adoptive boy to so called adoptive parents and pursuant to it giving and taking of adoption even from so called deed recitals. Even taken the recital in the so called deed of adoption of Rosanna to enjoy with absolute rights on the properties of Narayanamma which she inherited from her parents. It shows Mangamma died in 1949 or so and thus by then Narayanamma even acquired no property rights in the property to

convey under so called adoption deed in 1942. Thus, no rights in any property to convey muchless conveyed from said recitals of 1942 document supra. When Narayanamma got her husband, who admittedly died few months before filing of the suit in 1973 and claimed that she was in possession and later through 2nd plaintiff by leased out, the lower Court went wrong in not believing the evidence of plaintiffs in support of the plea. Coming to the gift of joint rights in the half share of Narayanamma under gift deed dated 15.06.1959 alleged, which was in favour of Rosanna, Aswarthappa, Narayana all three persons to get jointly, there is nothing to reject said evidence muchless to doubt the Ex.A-1 gift deed (15.06.1959) marked therein whereunder Narayanamma was given her half share out of her properties to the three persons jointly and there remain the other half and even that document shows she has been cultivating the said properties and the revenue adangals No.2 account, No.13 account also show Narayanamma was paying land revenue after death of her mother Mangamma over the properties with possession including for the fasali 1382 and the tax receipts book also show Narayanamma was paying the land revenue including for the years 1972-73 and even Rosanna the so called adopted son stated that about 9 months after death of Rangappa, Narsappa, 2nd plaintiff in suit O.S. No.274 of 1973, took away Narayanamma to their house and started disputes and also gave police report against him as if he was interfered with his possession and he gave an undertaking of he would not interfere with his possession. He also admitted that he was paying land revenue in the name of Narayanamma. Patta was to say transferred in his name, it is not known how transfer of patta was affected during life time of Narayanamma in the name of Rosanna. D.W-4 village Munsiff stated that Rosanna was paying land revenue on behalf of Narayanamma and D.W-1 also stated that Narayanamma was in possession of the same and D.W-2 also stated Narayanamma alone in possession and D.W-3 also stated that only after death of Narayanamma, Rosanna

came into possession of the house and D.W-4 also stated that all the properties belongs to Narayanamma and this is clear from the said evidence including from the evidence of D.W-5 of Narayanamma's possession and enjoyment of property by paying taxes in her name being its owner subject to the gifts by retaining life time possession and enjoyment. 1st defendant Rosanna stated that after police complaint was given under Ex.B-1, the suit filed was within 2 months and to say that his undertaking/statement was obtained by coersion, there is no basis. In fact Ex.B-1 dated 29.06.1973 was few days prior to the date of filing of suit of 10.07.1973 and as concluded by the appellate Court in its judgment Ex.A-2, the 1st respondent was cultivating the suit lands by the date of suit only on behalf of Narayanamma and even Narayanamma was alone in possession as on the date of suit, however, for the oral lease set up by 2nd plaintiff-appellant, for no proof and Narayanamma died subsequently, the appellant is not entitled to the suit relief of injunction. No doubt, the appellant got half share in the properties by virtue of the gift in his favour by Narayanamma. When such is the case under the other gift by Narayanamma, the defendants are entitled to the remaining half and between co-owners there cannot be no permanent injunction in dismissing the appeal ultimately.

20) It is to say from the first appeal judgment that, the finding of the trial Court in O.S. No.274 of 1973 of Rosanna was the adopted son by virtue of the adoption deed dated 13.11.1942 is not correct for there is no valid adoption, but for to say Rosanna, Aswarthappa and Narayana were given to give half share out of properties of the Narayanamma by her earlier and the other half given to Narayanappa and as such between co-owners there can be no injunction in the whole property undivided.

21) In the second appeal against the judgment dated 18.03.1987 covered by Ex.B-21 i.e., S.A. No.170 of 1982 against A.S.

No.119 of 1979 against O.S. No.274 of 1973, it was held that in view of the present suit in O.S. No.102 of 1985 filed for partition in Sub-Court, the Subordinate Judge to dispose of the said suit on merits accordingly, without being influenced by the observations of first appellate Court in A.S. No.119 of 1979.

22) Before coming further to the present *lis,* even uninfluenced by said observations, what is discussed supra is crystal clear of Narayanamma the absolute owner in possession and enjoyment and the adoption deed is invalid as discussed supra in detail and Narayanamma never parted with her possession and enjoyment even conveyed rights under the two gift deeds Ex.A-7 and A-1 respectively and it is after lifetime of Narayanamma the respective donees of the gift deeds to the respective extents entitled to possession that was reserved by her for her enjoyment.

23) Apart from the above, coming to the lis in O.S. No.80 of 1977, Ex.A-3 to A-6 are the plaint, written statement, judgment and decree in O.S. No.80 of 1977. As discussed supra, the plaint in O.S. No.80 of 1977 was marked as Ex.A-11 in A.S. No.119 of 1979. Thus, so far as O.S. No.274 of 1973 concerned it is left open to decide the present *lis* in O.S. No.102 of 1985 independently and uninfluenced by any adverse observations in O.S. No.274 of 1973 and the findings in A.S. No.119 of 1979. But for that, it nowhere set aside in the second appeal S.A. No.170 of 1982 covered by Ex.B-21 the appeal judgment findings. As per O.S. No.80 of 1977 plaint copy Ex.A-3 which is a suit filed by K.Rosanna against T.Narsappa 2nd plaintiff and 6th defendant of O.S. No.274 of 1973 and Yanappa i.e., 1st defendant against plaintiffs of O.S. No.274 of 1973 filed on 21.11.1974 as indigent person informa papuries seeking lis; the plaint averments were that the A-schedule properties are the absolute properties of Kakarla Narayanamma who died on 21.10.1974 (in fact she died on 09.05.1979 only during the pendency of O.S. No.274 of 1973 as per

the record), that Rangappa was her husband, who died in or about February, 1973. In fact in the registered gift deed dated 13.04.1973 in favour of Narsappa by Narayanamma, it was referred he died 7 months prior to that, that was in July 1972, that plaintiff was taken in adoption of Rangappa and Narayanamma as per Hindu Dharma Sastras being the adoptive father's brother's son of same family with all ceremonies of giving and taking of the adoption dated 12.11.1942 and evidencing the same an adoption deed was executed on 13.11.1942 by Narayanamma with consent and approval of her husband and other respective people were also attested in the adoption deed and later plaintiff was treated as adopted son of Rangappa and Narayanamma, Balappa was also brought to the family by his father-in-law for no male assistance since only child Chandrappa died and plaintiff was living with Narayanamma in her father's house along with husband of Narayanamma who were affectionate towards him and performed his marriage subsequent to said adoption and he continued as their son and they treated him as adopted son and in the registered deed of adoption dated 13.11.1942, all properties belonging to Narayanamma and Rangappa were vested on him thereby he is entitled to the properties shown in the plaint A-schedule which has been in his possession and enjoyment uninterruptedly since 1942 till she was ousted from possession by orders in I.A. No.674 of 1973 in O.S. No.274 of 1973 and he perfected title by adverse possession over the properties and Narayanamma and the 1st defendant herein by name T.Narsappa as plaintiffs filed O.S. No.274 of 1973 obtained temporary injunction against him and because of the temporary injunction orders he was ousted from possession as supra by her and her eldest sisters Pullamma's son-Narsappa, that said Narayanamma's eldest sister's daughter's son Narayana (D-2 in the suit) by taking advantage of old age and fickle mind of Narayanamma, prevailed in creating a document for suit properties which does not create any interest as by 1942 itself she completely divested of all her rights and of her husband

over the properties. Thus, no right to convey and by virtue of filing of O.S. No.274 of 1973 for injunction a cloud is cast on his right, title and interest, he filed the suit for declaration of title and possession as dispossessed by taking advantage of order in I.A. No.674 of 1973 in O.S. No.274 of 1973 and he got cause of action for the same from date of adoption on 12.11.1942 and deed of adoption on 13.11.1942 and in February, 1973 when Rangamma died, in October, 1974 when Narayanamma died and in 1942 when from he was exercising right over the properties and since when he was dispossessed as per orders in I.A. No.674 of 1973 in I.A. No.274 of 1973. In fact, in the plaint referred supra Ex.A-3, the date of death of Rangappa given as false so also date of death of Narayanamma. The so called adoption allegedly taken up by giving and taking on 12.11.1942 not made a whisper in his written statement as sole defendant, no doubt subsequently after defendants 2 to 6 added, in O.S. No.274 of 1973, in his evidence as D.W-5 the alleged giving and taking of adoption introduced from the evidence of him and of the alleged attestor to the document. Even said oral evidence introduced with no plea which is contra to the recitals of the adoption deed dated 13.11.1942 cannot be permitted for the document is silent as to giving and taking by the natural parents of Rosanna muchless by Narayanamma's husband Rangappa, but for alleged adoption by Narayanamma under the document which is observed as invalid since against the law in discussing and dealing with the appeal from what is concluded supra to substantiate. To say he is not the adopted son of Rangappa and to claim as adopted son of Narayanamma, from the invalid document dated 13.11.1942 for her no right by then even in any properties and there is no proof of giving and taking which is a pre-requisite to establish so called adoption since not proved muchless conveying any property thereunder. The question of any delivery of possession to him also muchless of his taking of possession and started cultivation and enjoyment from then of hardly 6 years old, besides not believable

does not arise practically for any adverse possession against Narayanamma for not even shown represented by any other person as guardian, apart from the fact of there is no convenience of any property rights over the property of Narayanamma under the document to him by any alleged recital of 1942 document as concluded supra, to claim any right muchless with title or adverse possession. That also belie from evidence on record covered by O.S. No.274 of 1973 more particularly from the evidence of D.Ws 1 to 4 and of D.W-5 from the admissions in the cross-examination of property standing in the name of Narayanamma till her death and any tax paid by him was only on behalf of the Narayanamma and not in his name and there was no transfer of the property by mutation but for just before filing of the suit in O.S. No.274 of 1973 if any from D.W-4's evidence and even the revenue people have no authority to change the mutation and that does not confer any right and having paid the tax on behalf of Narayanamma by acknowledging her right over the property, he cannot claim by any possession over the property muchless to set up any adverse possession. In the written statement in O.S.No.80 of 1977 marked as Ex.A-4 the said T.Narsappa (Plaintiff in O.S. No.102 of 1985) contended that the property belongs to Narayanamma is true and her husband died in 1973 also true, so also she died in October, 1974, but for to say the allegation of his taking of adoption by Narayanamma and her husband Rangappa under Hindu Law as false and there was no any ceremony of giving and taking for alleged adoption, muchless prior to the execution of said document dated 13.11.1942 so to claim and for Narayanamma to execute a document to adopt, she has no competency or authority to adopt any person muchless said Rosanna (plaintiff) and the alleged consent of her husband is not correct for no consent in writing required by law to adopt after his life time. Said document has no legal sanctity to make a claim thereunder muchless to maintain the suit with such claim and he filed the suit with an invented claim for non-existing right and he never

lived with Narayanamma and Rangappa and the alleged adoption deed recitals give no right or possession thereunder for even saying he was ousted by virtue of orders in I.A. No.674 of 1973 in O.S. No.274 of 1973 for the first time. It was thereby the injunction order was granted against him and the appeal against the order in I.A. No.674 of 1973, as C.M.A. No.20 of 1973 was also ended in dismissal by confirming the injunction order which he cannot question. He contended that they never prevailed upon Narayanamma to execute any document for her properties. Narayanamma in her free will and volition and with full knowledge and in sound mind executed the gift deed dated 15.06.1959(Ex.A-7) gifting undivided half of her properties in plaint-A schedule in favour of Rosanna, Aswarthappa and Narayana by reserving life interest possession and enjoyment with her and later she executed another gift deed in 13.04.1973 (Ex.A1) voluntarily in favour of Narsappa for the remaining half by reserving life interest, possession and enjoyment with her and she also executed a power of attorney in favour of Narsappa to manage her properties and after death of Narsamma and the gift deeds the 1st defendant entitled to possession of half of the properties and Narayana (2nd defendant to the suit), the plaintiff Rosanna entitled 1/6th and other 1/6th by the sons and daughter of Aswarthappa and thereby the suit for declaration and possession for entire plaint schedule property is not tenable and he has no right to question the gift deeds and the suit is bad for non-joinder of parties and the suit is not maintainable and there is no cause of action and to dismiss the suit.

24) It is for default of said Rosanna, the Court dismissed the suit covered by dismissal judgment and decree dated 26.08.1982 which are Exs.A-5 and A-6. There is nothing to show any filing of petition for restoration of the suit O.S. No.80 of 1977 dismissed for default on 26.08.1982 which is covered by Exs.A-3 to A-6 in the *lis* covered by the present appeal on hand against O.S. No.102 of 1985.

25) The 1st plaintiff T.Narsappa deposed as P.W-1 that the suit properties originally belonged to T.Balappa who died 70 years ago prior to his evidence in 1992 (as stated already from the record it shows Balappa died in or around 1920 and his son Chandrappa died 8 years later in or around 1928-29) and he was having wife Mangamma and two daughters Pullamma, Narayanamma and Pullamma also died and after death of Chandrappa, S/o.Balappa wife of Balappa, Mangamma, succeeded the properties and she also died and after her death as one of her daughter pre-deceased her, the only surviving daughter Narayanamma succeeded the properties and that he is son of said Pullamma pre-deceased sister of Narayanamma. He also deposed that the plaintiffs 2 to 4 in the suit Narayana Swamy, Narasimhulu, Rajendra, S/o. Aswarthappa besides 2nd defendant Narayanamma D/o. Aswarthappa, 3rd defendant Narayana (brother of Aswarthappa) are his late sister's issues i.e., Aswarthappa and Narayana are his sister's sons. He further deposed that Narayanamma, his mother's sister, executed the gift deed in 1973 (Ex.A-1) in his favour giving half of her property by reserving life interest enjoyment with possession with her and it was executed as per the instructions of Narayanamma in a sound and healthy state of mind and it was purely executed and attested after her understood as contents which were as per her say after the same was read over in the presence of attestors besides himself present and she cause it registered, the Registrar also read over and she accepted and put her thumb impression and was identified by identifying witnesses for registration and after life time of Narayanamma he came into possession of property pursuant to the gift deed. He deposed that Narayanamma's husband Rangappa had no property he never went into illatum son-in-law to Mangamma and Balappa and Rosanna was never adopted by Rangappa and Narayanamma and while he was cultivating the property in the year 1973 Rosanna along with some police came and obstructed and they filed O.S. No.274 of 1973 and

obtained temporary injunction against Rosanna and against the suit dismissal he filed appeal covered by Ex.A-2 appeal judgment dated 24.09.1981 in O.S. No.117 of 1979 holding between co-owners there could be no injunction as he was holding half of the suit schedule property and in the remaining half Rosanna got right along with others and Rosanna filed O.S. No.80 of 1977 as indigent person in 1974 and the suit was dismissed for default covered by Ex.A-3 to A-6 plaint, statement, decree and judgment. Prior to the suit he asked the defendants to cooperate for partition and they did not agree, which made him to file the suit for partition and separate possession (of 5/8th share) and for other reliefs in plaint schedule properties. As the remaining properties belongs to Aswarthappa, Narayana and Rosanna to whom Narayanamma gifted with life interest possession covered by Ex.A-7 (dated 15.06.1959) and as plaintiffs 2 to 4 succeeded the 1/3rd share of Ex.A-7 that of Aswarthappa the suit is for their share also for partition.

26) In the cross-examination deposed that the 1st defendant Rosanna originally native of Kasipuram-Kottala and Narayanamma's husband Rangappa was his father's brother and denied the suggestion and since Rangappa's marriage with Narayanamma he was residing at her parents' place Chayapuram or he was taken as illatum son-in-law by his mother-in-law Mangamma after death of Mangamma's husband Balappa and son Chandrappa. He deposed that he was cultivating the plaint schedule property on Koru basis till death of Narayanamma and when Rosanna (1st defendant) obstructed the suit for permanent injunction (O.S. No.274 of 1973) filed and he denied the suggestion that Rosanna, 1st defendant, was taken in adoption by Narayanamma under adoption deed (Ex.B-1 dated 13.11.1942) and also denied the suggestion that Narayanamma conveyed her properties under the same to Rosanna i.e., 1st defendant. In the further cross-examination he deposed that

Narayanamma executed Ex.A-1 dated 13.04.1973 in his favour prior to their filing of suit O.S. No.274 of 1973 in Gooty Munsif Court he also deposed that the other half of the properties gifted by Narayanamma to his sister's sons and Rosanna (1st defendant) equally (Ex.A-7 dated 15.06.1959) it was prior to the gift to him. He denied the suggestion of Narayanamma executed the Ex.A-7 gift deed (dated 15.06.1959) with consent of Rosanna (1st defendant). If that is the case, Rosanna admits the Ex.A-7 gift deed dated 15.06.1959 in referring the properties as that of Narayanamma in saying he consented and in taking undivided 1/3rd out of half of the properties of her gifted thereunder as remaining half of her property gifted to Narsappa, 1st plaintiff, under Ex.A-1 dated 13.04.1973. Thus question of setting up adverse possession does not arise apart from having elected question of reverting back to claim any rights under so called adoption from 1942 does not arise. P.W-1 denied the suggestion that Narayanamma educated Rosanna and also performed his marriage or for the suit properties patta stand in the name of Rosanna (1st defendant). He deposed that the patta stands in his name and other defendants also for the suit properties and prior to the transfer in their name, that stood in the name of Narayanamma and Narayanamma in her life time was paying taxes for the suit properties. He deposed that Rangappa died 10 years earlier to Narayanamma and Narayanamma died 8 years prior to Ex.A-1 gift deed. In fact as per the record, more particularly from Ex.A-1 gift deed dated 13.04.1973 recital, Rangappa died 7 months before to say in July, 1972 whereas Narayanamma died on 09.05.1979. Though Rosanna as plaintiff in O.S. No.80 of 1977 claimed Narayanamma died in October, 1974. He rightly denied the suggestion that Rangappa died 2 months 15 days prior to death of Narayanamma. He deposed that Rangappa came to Chayapuram where he died 8 or 10 months struck off and retyped with days prior to his death at Chayapuram. He deposed that before death of

Narayanamma, he suffered with Diarrhea, aged at about 74 years with eye sight and deafness and after death of her husband Rangappa, Narayanamma was looking after by Aswarthappa and Narayana, her sister's daughter's sons and on behalf of Narayanamma they and himself were cultivating the lands and Rosanna, 1st defendant, was not with Narayanamma before her death and the suggestion that Rosanna was paying land revenue since he attained majority for the lands is denied. He deposed that in the land ceiling declarations, himself and other plaintiffs show suit lands for about Ac.15-00 as of him and some by others and the declarations were filed during the life time of Narayanamma after the death of Rangappa. He deposed that he performed the obsequies of Narayanamma and not by Rosanna. He deposed that Narayanamma was hale and healthy till 10 days prior to her death and he was 20 years older to Rosanna (1st defendant). He deposed that for the lands gifted to him (under Ex.A-1 dated 13.04.1973) he did not pay land revenue during life time of Narayanamma or later and he cannot say Rosanna, 1st defendant, was paying any land revenue but for his saying. He deposed that 2 or 3 months prior to the gift deed, Narayanamma was saying to execute gift deed in his favour and he denied the suggestion of he brought the gift deed executed by use of force and stated no knowledge about 1st defendant cause published in Andhra Prabha dated 05.06.1973 (Ex.B-20) that Narayanamma was taken away by them by force and obtained documents from her.

27) In fact it is necessary to mention here that if really 1st defendant and Narayanamma were living together either at his house Kottala or at her house Chayapuram and really she was taken by plaintiff Narsappa and others by force prior to execution of Ex.A-1 gift deed dated 13.04.1973, he could not wait for giving the paper publication dated 05.06.1973 for about three months and it clearly shows his intention is something suspicious in giving of paper

publication after knowing about Ex.A-1 gift deed dated 13.04.1973 executed by Narayanamma. It is not his case that Narayanamma disputed about her execution and cause issued any notice or cause issued in the news paper publication. Even Narayanamma filed O.S. No.274 of 1973 along with Narsappa against Rosanna, 1st defendant, some time after the gift deed Ex.A-1 dated 13.04.1973 only in June or July, 1973 as discussed supra by reiterated the gift and not disputed the gift executed by her. Once the executant admitted there is no more proof required for the gift for not the case of anybody of not accepted. In the cross-examination further of P.W-1 Narsappa by 1st defendant Rosanna, he deposed that 1st defendant was residing in the house of Narayanamma since one year and after death of Narayanamma her house was in the possession of 1st plaintiff, P.W-1 who was looking after and not given to anybody and two years after death of Narayanamma only Rosanna 1st defendant occupied the house by force for which he neither reported to police nor cause issued notice. He denied the suggestion that, Narayanamma gave all her properties to Rosanna, 1st defendant, under adoption deed (Ex.B-1 dated 13.11.1942) and she had no right to execute the gift deeds. In fact in the earlier cross examination as discussed supra, he admitted Ex.A-7 gift deed dated 15.06.1959 executed by Narayanamma with his consent and the suggestion goes contrary to it. In the further cross-examination, he deposed that he denied the suggestion that out of Narayanamma's properties shown in the declaration by Rosanna the surplus land was taken by Government by paying him compensation and he does not know when any extent of Narayanamma was acquired and 1st defendant on behalf of Narayanamma has taken compensation. Even this suggestion goes against him for not his case that he made any rival claim under Section 30 of Land Acquisition Act under alleged adoption deed, if he is the owner and Narayanamma has no right to be paid any compensation for his taking compensation

on her behalf for the land acquired of her in so suggesting, to say he also acknowledged right of Narayanamma over the properties therefrom. Coming to the evidence of P.W-2, A.Bheemappa who is the document writer and scribe of Ex.A-1 gift deed dated 13.04.1973 executed by Narayanamma in favour of the plaintiff Narsappa, he deposed about her due execution and his scribing at her instructions in the presence of attestors and after he scribed the original after noted the instructions in a paper about the particulars to scribe the document and after scribing the original document and read over the contents to executant Narayanamma and attestors, she admitted the contents as correct and affixed her left thumb impression and attestors present saw the execution and her putting thumb impression, attested the document in her presence and she was hale and healthy at the time of execution and he handed over the original document to the executant Narayanamma and she caused to register before Sub-Registrar, Guntakal. He deposed that he is a licenced document writer for more than 30 to 40 years though he cannot giving licence number as on the date of Ex.A-1 and again he gave his licence particulars of then licence No.5/1972 which he has obtained in the year,1972. He deposed that he executed by then about 1,000 to 2,000 documents though he cannot give details that to whom he wrote, what nature of document he deposed that on that day Ex.A-1 was the only document executed by him for said Narayanamma and about 4 or 5 years thereafter Narayanamma stated died and he saw Narayanamma at the time of execution and not before or later and he believed her as Narayanamma from her say as Narayanamma and she did not bring any documents for executing Ex.A-1 and to say how much land she gifted under Ex.A-1 he has to verify the document. He denied the suggestion Narayanamma was having defective eye sight and defective hearing. He deposed that stamps were purchased by Narayanamma of which he scribed Ex.A-1 gift at the warandah of Sub-Registrar's Office at Guntakal after the stamps purchased by her from

one Lakshmidayamma there in her name for the property valued worth Rs.15,000/- and on his calculation of stamp worth Rs.450/- he deposed that both the attestors of Ex.A-1 belong to Chayapuram and Narayanamma and the attestors came from that village. He deposed that his licence was suspended about one month before giving evidence on the ground of issued receipt for excess amount for scribing document, than prescribed amount later it was restored and he denied the suggestion of frequently his licence was under suspension for such causes or with the assistance of 1st plaintiff Narsappa and the attestors and himself, the document Ex.A-1 was corrected and he is deposing falsehood. There is no denial of the thumb impression of Narayanamma muchless disputing not that of her that execution before the Sub-Registrar by same person. Narayanamma in her life time not even disputed even she was alive about 6 years after execution of the document as discussed supra. She herself filed the suit along with 2nd plaintiff and reiterating the gift deeds therein. Thereby above cross-examination no way shatters the same. In fact, in his written statement as 1st defendant Rosanna contended particularly at para-4 that the gift is not true. Execution of the gift by Narayanamma voluntary is not true that she was aged about 75 years old by then and mentally not capable of taking care of herself and taking advantage of her week mental and physical condition, the 1st defendant (instead of 1st plaintiff to so mention) seems to have played fraud and might have obtained the gift deed and in any event Narayanamma has not sole and absolute owner of the property as on the date of gift and is thereby not valid and enforceable. It is not even stated that Narayanamma has no title because she parted with all her properties under alleged adoption deed of Ex.B-1 dated 13.11.1942. It is not even denied the thumb impression of her and the gift deed and attestation but for saying her mental condition was not fit for executing. There is no positive evidence on it regarding her infirm mental stage.

Any evidence in cross-examination of P.W-1 of she was having some problem of eye sight and hearing, no way a bar to the execution of document muchless to assume any mental condition is weak or not stable muchless to doubt about her capacity to execute gift deed. The fact that even later to the execution of gift deed by reiterating it she filed the suit in O.S. No.274 of 1973 itself is sufficient to say the gift executed by her voluntarily she reiterated it in her pleading she was in fit state of mind, hale and healthy. In fact one of the attestors (to the document Ex.A-1 gift deed dated 13.04.1973) was examined as P.W-1 by name T.Pullayya not in dispute. In proof of the document and in the suit for injunction covered by the Judgment based on plea regarding the Ex.A-1 gift deed also in the plaint para-5 besides Ex.A-7 gift deed in the plaint para-4 and there is no specific denial of competency and state of mind for execution of the gift deed and genuineness of the gift deeds but for to say she was not the sole owner to execute the gift deeds. In this regard as discussed supra, she was not the original owner as by the date of alleged adoption, her mother Mangamma was alive as per the evidence on record of O.S. No.274 of 1973 from his say as D.W-5 apart from his witnesses D.Ws 1 to 4 of Mangamma mother of Narayanamma died in or around 1948-49 which is six years later the date of Ex.B-1 dated 13.11.1942 and by then thus, she has no property to convey even to rely on Ex.B-1 recital as what she could succeeded was only after death of her mother; apart from what is discussed supra of said recitals in Ex.B-1, despite any property of Narayanamma owned and possessed by them including from any proof of her mother died prior to that, was not conveyed and title passed under Ex.B-1.

28) Now, coming to the evidence of 1st defendant as D.W-1 regarding the allegation of Narayanamma's husband Rangappa, no other than his father Pullayya's brother was went as illatum son-in-law to his mother-in-law's house and enjoying the properties of his late father-in-law Balappa as illatum son-in-law along with his wife

Narayanamma, that does not mean there was no any illatum adoption as discussed supra. Balappa died in or around 1920 left behind him his son Chandrappa and two daughters and there was nothing to bring any son-in-law in adoption as illatum son-in-law with pre-marital agreement to his one of the two daughters Narayanamma. Apart from it Chandrappa died un-married in or around 1928-29 and when such is the case Mangamma whose son pre-deceased her and whose husband pre-deceased her and her son was having two daughters Pullamma and Narayanamma and when Pullamma got son and daughter i.e., Narsappa besides daughter as Dohitrudu to Mangamma, there was nothing to bring any illatum son-in-law.

29) As per the settled expressions discussed in the Judgments in A.S. No.119 of 1979 covered by Ex.A-2 for illatum adoption there must be pre-marital arrangement to the daughter i.e., not even the case between Narayanamma and Rangappa for the marriage to perform there was any such agreement of validate apart from the fact of Chadnrappa was alive even by the time of their marriage besides Naryanamma's another married sister Pullamma. There is no evidence worth regarding the alleged illatum adoption from the material on record and the evidence of so called witness among D.Ws 1 to 4 in O.S.No.274 of 1973 that evidence is quite inconsistent and incredible to rely and there is no any record in proof of it muchless any mediation in the name of Rangappa even to believe any arrangement to give half of the property under illatum adoption as a condition to Rangappa for Rosanna as adopted son in allotting so to claim. Regarding adoption also there are inconsistent pleas and as discussed supra from Ex.B-1 document relied on by him it no where shows his alleged adoption by Rangappa but for by Narayanamma in the life time of Rangappa admittedly in his saying Rangappa is the one of the attestor to the document. When Rangappa not taken the adoption, but for alleging from the recitals therein by Narayanamma

who was incompetent, the adoption is invalid so also for no proof of giving of Rosanna in adoption by his parents had has 6th year which is the pre-requisite to invalidate the adoption as discussed supra. He also categorically deposed in his chief examination as D.W-1 of he was at the time of alleged adoption in 1942 aged 6 years and it is also his categorically say of Ex.B-1 adoption deed dated 13.11.1942 executed by Narayanamma only in his favour. It was not even in his favour from the recitals but for a unilateral document of Narayanamma in so referring as the said Rosanna was her adopted son, who was incompetent to adopt when her husband was alive. Regarding Ex.B-2 Lagnapatrika referring him as adopted son in performing his marriage. Regarding Ex.A-7 gift deed dated 15.06.1959 relied on by him under which he was given 1/6 out of properties of Narayanamma only by claiming as she was the absolute owner of the properties, to rely in saying he was referred as adopted son of Narayanamma and also at other place as adopted son of Rangappa, from the settled law once he wanted to rely on the document to so say regarding his relationship with Narayanamma as adopted son, he cannot dispute the document and the gift thereunder their settlement recitals thereunder as a person want to elect and rely on a document he is to elect to rely on the document as a whole and not on a piece of recital of his advantage and to dispute the other piece which appears not to his advantage by aprobate and reprobate as per the settled expressions of law including from the latest expression therein of the Apex Court in ***Karan Kapahi V. M/s.Lalchand P.C. Trust***[48] where by referring to the Apex Court expression in ***Nagubai Ammal V. B.Sham Rao***[49] categorically discussed the principle at paras 62 to 69 also by referring to another expression of the Apex Court in ***C.Beepathuma V. Velasani S.Kadambolithaya***[50] para 17 and 18 in saying doctrine of estoppel place to deny the other portions of the recitals of an instrument when elected to rely on some portions of the recitals of the document. Even

coming to Exs.B-3 to B-10 tax receipts referred by him in his evidence in chief. Those are the taxes paid by acknowledging the ownership of Narayanamma with possession and not in any independent way and that also establish the ownership of the properties that of Narayanamma with right and possession that is also substantiated from recitals of Ex.A-7 settlement deed dated 15.06.1959 and Ex.A-1 settlement deed dated 13.04.1973. Even coming to Ex.B-11 referred by him of transfer of patta in his name by saying from 10(1) account, his name noted as pattadar. There is no proceeding validly under law for transfer of patta in his name all of a sudden to give any sanctity to it and the said revenue entry in 10(1) account no way takes away the title of the Narayanamma muchless possession and enjoyment nor confer any title to the said Rosanna (D.W-1) muchless coming in the way of the enforceability of Ex.A-7 and Ex.A-1 settlement deeds; under which Narayanamma confer title to the settlees respectively by reserving life interest limited enjoyment with possession without right of alienation. When such is the case, the Ex.A-12 to A-14 verification report of land ceiling Tribunal verification officer, Land Reforms Tribunal, Anantapur order in holding excess land beyond prescribed holding and Ex.A-14 notice to surrender to the excess land no way take away the existing right of the settlee under Narayanamma muchless create any right in favour of Rosanna over the suit schedule properties other than 1/6th share out of suit schedule properties of Narayanamma he was given undivided under Ex.A-7 gift deed dated 15.06.1959 as discussed supra.

30) Regarding Ex.B-15 plaint, Ex.B-11 written statement of O.S.No.274 of 1973 and Ex.B-17 and Ex.B-18 decree and judgment as well as Ex.A-2 appeal judgment in A.S.No.119 of 1979 discussed supra there is nothing more there from to favour the continuation of the 1st defendant Rosanna or from his evidence as D.W-1 to dispute the title of the 1st plaintiff for half of the suit schedule property in seeking

partition based on Ex.A-1 settlement deed executed by Narayanamma dated 13.04.1973 duly proved. Regarding Ex.B-2 second appeal judgment also same is discussed supra so also Ex.B-22 relevant portion of written statement of him and Ex.B-20 paper publication. Independent findings of the 1st appellate Court in A.S. No.119 of 1979 against O.S. No.274 of 1973 covered by Ex.A-2, the material on record discussed supra, establishes the 1st plaintiff's title for undivided half over the plaint schedule property to claim the relief of partition apart from the other plaintiffs 2 to 4 right over further 1/6th out of plaint schedule properties, together with 2nd defendant, from remaining 1/6th each belongs to 1st defendant and 3rd defendant respectively as per Ex.A-7 and Ex.A-1 respectively. Even from the chief examination deposition of him referring to Ex.B-21 judgment in the second appeal in S.A.No.170 of 1982. In his cross-examination as D.W-1 he deposed that there is no documentary evidence to show Rangappa went as illatum son-in-law and by that time he was ot even born for saying anything and he admitted that after death of Balappa, Narayanamma's name was mutated in the revenue records for the suit properties though he cannot say how many years after death of Balappa, Narayanamma's name was mutated and as to Balappa's wife Mangamma's name was never earlier mutated before mutation in name of Narayanamma. He deposed that the suit schedule properties never stood in the name of Rangappa and there is no documentary proof to show Rangappa paid any land revenue or managed any properties or in possession of any of the properties. He deposed that to his knowledge there are documents to show Rangappa was the illatum son-in-law of Balappa. He deposed that under Ex.B-1 document executed by Narayanamma alone, adoption taken place and further deposes that it was on that day a ceremony of giving and taking through a Purohit called taken place. If such is the case, his claim as discussed supra on alleged adoption on the previous day of

giving and taking took place and the document executed as an acknowledgement to it on next day is quite inconsistent and belies said version and there is no credibility to the said version and apart from the fact that he was hardly 6 years to say anything other than to speak from his memory at that date as to any ceremony taken place. When the document itself speaks taking of adoption nowhere speaks the adoption taken was by Rangappa, husband of Narayanamma, but for by Narayanamma and nowhere speaks followed by any ceremony muchless giving and taking and when she was incompetent when her husband was alive even to take besides no proof of giving and thereby it was invalid even from his saying the recitals are correct and taken so nowhere create any right muchless over any property thereunder for alleged adoption it is invalid so also in his referring even subsequently as adopted son in any Lagnapatrika in performing marriage or in Ex.A-7 settlement deed dated 15.06.1959 that does not validate the adoption apart from nowhere create any right over the property of the adoptive mother for maternal side for not any coparcenery property of the father to claim any right by birth subject to proof of such alleged adoption or to presume any adoption from even subsequent reference. It is for the reason that in ***Vaithalingam Mudaliar V. Murugan***[51]. The recital in Ex.B-1 so called adoption deed no way creates any right even taken as *Persona Designata* gift for not a gift with love and affection as consideration muchless settlement muchless any conveyance even from the recital of right and enjoyment and title retained with her and said to pass or derive only after her life time at best to construe as a like bequeath and there are no such recitals even as observed though on different facts but for application on the principle to little correlation to the facts by Apex Court in ***Baby Ammal V. R***[52] only parents of a child can give and not by alone himself or any one else in adoption and there is no presumption in favour of adoption in the absence of evidence of giving or acceptance of any circumstances by which such a presumption can be supported, though

the adoption may have taken place long before and been acquiesced in by all concerned, an invalid adoption does not *per se* destroyed the adoptee's right in his natural family and no estoppel arises in such a case unless in consequences of adoption the possession of party staying up especially he denied to his attestation. It is to say presumption cannot be drawn and even by referring by acquiescence does not give any right in the absence of proof of giving and taking as an essential ceremony of adoption performed or any circumstances so to presume strongly any strong circumstances so to presume from lapse of the time to the date of evidence from the date of adoption.

31) Even the Apex Court in ***Madhusudhan Das V. Narayani.B***[53] at paras 19 and 20 held that a person who seeks to displace succession of property alleging adoption must discharge the burden lies upon him by proof of the factum of adoption and its validity, free from all suspicion and so consistent and probable as to given no information for doubting its truth. For a valid adoption, the physical act of giving and taking is an essential requisite, a ceremony imperative in all adoptions, whatever the cost and this requisite is satisfied in its essence only by the actual delivery and acceptance of the boy, even though there exists an expression of consent or an executed deed of adoption, though Datta Homam is not necessarily contemplate in need to adopt a boy belongs to same Gotra of adoptive father. The trial Court in fact from this material when came to the right conclusion of there is no valid adoption and in proof of giving and taking and Ex.A-1 and A-7 are valid and the plaintiff under Ex.A-1 document got half undivided in the plaint schedule over partition in order to separate possession besides other plaintiffs for the remaining as claimed and for profits, for this Court while sitting in appeal as laid down in the said expression of the Apex Court at para-8 there is nothing to interfere for the reason that when there is a conflict of oral evidence on any matter in issue its resolution turns upon the credibility of the witnesses, the

general rule is that the appellate Court should permit the findings of fact rendered by the trial Court to prevail unless it clearly appears that some special feature about the evidence of a particular witness has escaped the notice of the trial Court or there is sufficient balance of improbable to displace its information as to where the credibility lies.

32) Even coming to D.W-1's cross examination it is quite inconsistent to above version that the adoption was under the document and the earlier version of the adoption ceremony taken place on previous day and the further cross examination version dated 24.02.1994 of two or three days after alleged adoption, the document Ex.B-1 was executed and registered at Sub-Registrar's Office, Anantapur and that on 12.11.1942 no ceremonies were performed but either on 10.11.1942 or 11.11.1942 and he does not remember whether he stated in Ex.A-9 deposition in O.S.No.274 of 1973 that it was on the previous day, the parents of him agreed to give him in adoption to Narayanamma and Rangappa, when it was the say where was the time to perform the ceremony and this inconsistent evidence belies. He was not admitted in his deposition of the suit property Exs.B-8 and B-9 receipts out of Exs.B-8 to B-10 of the years 1979 to 1984 and even Ex.B-7 receipt of the year 1973 after disputes arose and O.S.No.274 of 1973 filed. D.W-2, Village Administrative Officer, P.V.Gowd Ex-V.M of Konakandla during 1946 to 1984 claimed his age as 66 years by 1994. It is not believable to say he became a V.M on 01.06.1946 before completion of 18 years of age from the age he mentioned apart from his evidence to say through the introduced witness, he could not depose anything regarding alleged illatum adoption of Rangappa by his father-in-law Balappa of Chayapuram that his in-laws place is Chayapuram and he knows Narayanamma and wife Rangappa of Chayapuram and also Rosanna and his natural father Pullaiah and Rosanna residing at Chayapuram with his adoptive parents. He speaks regarding possession and enjoyment whereas in Ex.B-17 judgment of O.S. No.274 of 1973 one D.W-4 was

the village officer Veerabhadra Rao and his evidence is running contrary to the said evidence of Veerabhadra Rao. Even coming to the land acquired Ac.1-10 cents and compensation paid there is no record filed and Rosanna as 1st defendant D.W-1 claimed as discussed supra, the compensation paid to Narayanamma was taken by him on her behalf and thereby D.W-2 evidence is contra to it cannot be given credence so also regarding excess land holding and surrender proceedings. Regarding Ex.B-3 to B-10 cist receipts said to have been issued as discussed supra and cross-examination of D-1, D.W-1 Rosanna also Ex.B-7 to Ex.B-10 are subsequent to filing of O.S. No.274 of 1973 a post *liti* document and the other receipts are only in the name of Narayanamma and paid by Narayanamma and by her on her behalf which occurred no right over the property and in the cross-examination he deposed that even in the No.10 adangal a post *liti* document there is no even mention as adopted son for his cause mutating at the instance of Rosanna alleging based on adoption deed so mutated and when the adoption deed was of the year 1942. His first time mutating in 1973 after the litigation started cannot be given credence thereby his evidence also no improves the case.

33) Thus, so far as the trial Court finding in the judgment impugned in the appeal concerned when it came to the right conclusion having fresh in mind from appreciation of evidence on the factual matrix rightly of the plaintiffs are entitled to partition with separate possession and profits for this Court while sitting in the appeal there is nothing to interfere. Accordingly point Nos.1 to 3 are answered against the appellant confirming the trial Court's decree and Judgment and also the *mesne* profits arrived.

34) Even coming to the impugned revision petition on the quantum of profits ascertained by the lower Court in the final decree proceedings in I.A.No.467 of 1998 by C.R.P.No.998 of 2002, the commissioner as per the report inspected the properties covered by

the plaint schedule of Ac.35-03 cents in items 1 to 9 which is attached to the preliminary decree and found Ac.15-00 dry land and Ac.8-00 cultivable wet land and Ac.5-00 shown as waste land even raising pulses like Bengal Gram by estimated the yield of 3 bags Bengal gram per acre. The profits realized to the period from 1982 to 1985 three years prior to the suit and from the date of suit till the date of possession and the lis is undisputedly pending so far and possession not taken by division by metes and bunds of the share of 1st plaintiff of 12/24 and other petitioners 2 to 4 of the final decree petition of each 1/24 which the commissioner arrived at Rs.1,31,750/- + Rs.10,979/- for each 1/24th share. As per the evidence of 3rd petitioner as P.W-1 and another person of Chayapuram examined as P.W-2 besides 1st respondent as R.W-1 and another person of Chayapuram as R.W-2 as held by the lower Court in the final decree profits order impugned in the revision that from Ex.P-1 to P-9 No.3 adangals of fasali 1398 to 1408, those are cultivated as wet land under high level canals and it shows the total wet cultivation is more than 19-09 cents in the land of S.Nos.1038D and 1031B ground nut or cotton or the other commercial crops were raised during fasalis 1398 to 1401 and from 1403, this extends also under paddy cultivation to say from original cultivation of Ac.6-55 cents wet land it is more than 10-59 cents from fasali 1401, another Ac.7-03 cents all in paddy cultivation and the remaining as per the adangals disclose dry land of Ac.21-81 cents of which Ac.17-37 cents is with ground nut cultivation and Ac.3-06 cents with coriander and Kusuma of Ac.0-42 cents besides Jonna these are single crop based on rain fed and in fasali 1403 half of the extent raised with Bengal gram and raised seasonal crops likewise for fasali 1404 and the other with Jowar or Coriander, Ac.3-40 cents in S.No.1021/D though referred as waste land is not for crops raised from No.3 adangal from fasali 1398 onwrds like coriander, Bengal gram. Having regard to the above and from the Exs.P-1 to P-9 supra relates to the years 1988 to 1998 so far as future profits from the date of suit till 1985-

86 till 1987 there is no material placed. The Commissioner accepted the value of puffed rice at Rs.110/- per bag and the Commissioner considered the yield of paddy crop at 40 bags per acre and concluded the net yield around 15 to 20 bags and there from year wise from 1982 to 1987 arrived the income of Rs.33,000/- and 1988-89 and 1989-90 Rs.6,600/-, 1991-92 Rs.6,300/- for the extent above 10 to 11 acres like wise for the year 1992-93 to 1994-95 with little variation and for 1995-96 Rs.7,500/- and from 1996-97 to 2000-01 between Rs.10,000/- to Rs.11,000/- in arriving Rs.1,30,000/- for the Ac.10-00 and odd and with notional increase of 10% of the value of the paddy from respective years that all. Apart from it, the lower Court considered the yield from remaining land of about Ac.23-00 of which part in the cultivation from the years 1982-83 to 2000-01 in arriving Rs.5,83,200/- by taking the respective yield and value of the commercial crops. It is thereby the net amount arrived Rs.7,21,320/- and 12/24th share of 1st petitioner for half therein and 1/24th share of each petitioners 2 to 4 accordingly therein with interest at 6% p.a. Thereby, practically against the amount arrived including from the contentions raised in the grounds of revision for saying the area is drought hit or with no cultivation in the lands, there is no basic. When the adangals that can be taken as basis for respondents are the best persons in possession to speak otherwise by producing any accounts with them of the actual yield and from what it was sold and net income, which they failed to produce and from the basis of revenue record showing the estimated yield and the cultivation, for this Court while sitting in revision, there is no illegality or irregularity in said impugned order, muchless to reduce either the quantum arrived or rate of interest. Accordingly the revision is also liable to be dismissed.

35) In the result, the appeal and revision are dismissed. There is no order as to costs.

Dr. B. SIVA SANKARA RĀO, J

Date: 20-03-2014
ksh
Note: L.R. copy to be marked: Yes/No

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[1] AIR 2003 SC 1989
[2] AIR 1963 SC 1516
[3] AIR-2001-SC-965
[4] (2003(5)-SCC-89)
[5] 1975(1)SCC 212
[6] AIR-1976-SC-634
[7] AIR-1969-SC-1144
[8] 2011(8) SCALE 240
[9] AIR 1989 SC 193
[10] AIR 1987 SC 1242
[11] AIR 1966 SC 735,
[12] AIR 1954 SC 458
[13] AIR 1953 SC 235
[14] AIR 1995 SC 167
[15] AIR 1988 SC 719(B)
[16] 1991 (3) SCC 331
[17] 1998(5)-ALD-349
[18] 2003(8)-Supreme Today-194 at 196
[19] (2009) 3 SCC 287
[20] AIR 1984 SC 664
[21] (1994) 5 SCC 167
[22] 1911 (35) Bombay-169
[23] 1915(39) Bombay 441
[24] AIR 1951 PC 7
[25] AIR 1963 SC 185 at 193
[26] 1870 (7) Bombay HCAC 153
[27] 1869 (12) MIA 350
[28] 1909 (36) Cal 824
[29] AIR 1961 SC 1302
[30] 1906 (28) All. 377
[31] AIR 1926 PC 1927
[32] AIR 1970 SC 1673

[33] 1868(4) MHCR 169

[34] 1881 (6) Cal. 381

[35] AIR 1937 Bombay 169

[36] AIR 1939 PC 152

[37] AIR 1955 MB 129

[38] AIR 1954 Raj. 17

[39] AIR 1961 SC 1378

[40] 2010(3) Scale 569

[41] AIR 1956 SC 593,para 23 page 602

[42] AIR 1965 SC 241 at para 17&18

[43] AIR 1919 PC 162

[44] 1971(1) APLJ-338

[45] AIR 1959 (A.P) 360

[46] ILR 1914 MADRAS 529

[47] 1962(2) SCJ 472

[48] 2010(3) SCALE 569

[49] AIR 1956 SC 593

[50] AIR 1965 (SC) 241

[51] ILR 1937 Madras 529

[52] (1997)2 SCC 630

[53] AIR 1983 (SC) 114